

(28,956)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 406.

OKLAHOMA NATURAL GAS COMPANY, APPELLANT,

*vs.*

CAMPBELL RUSSELL, ART L. WALKER, AND E. R.  
HUGHES, CONSTITUTING THE CORPORATION COM-  
MISSION OF THE STATE OF OKLAHOMA, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF OKLAHOMA.

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1 In the District Court of United States for the Western District  
of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Con-  
stituting the Corporation Commission of Oklahoma, and George F. Short,  
Attorney General of Oklahoma, and the City of Tulsa, a  
Municipal Corporation, and I. J. Underwood, Its City Attorney,  
and The City of Sapulpa, a Municipal Corporation, and Leroy J.  
Burt, Its City Attorney, Defendants.

*Citation.*

To Campbell Russell, Art L. Walker and E. R. Hughes, Constituting  
the Corporation Commission of Oklahoma, and George F. Short,  
Attorney General of Oklahoma, and the City of Tulsa and I. J.  
Underwood and the City of Sapulpa and Leroy J. Burt, Greeting:

You are hereby cited and admonished to be and appear in and  
before the Supreme Court of the United States to be held in the  
City of Washington in the District of Columbia on the 5th day of  
June, 1922, pursuant to an order allowing an appeal filed and en-  
tered in the office of the clerk of the District Court of the United  
States for the Western District of Oklahoma from an interlocutory  
decree denying an application for a temporary injunction signed,  
filed and entered on the 27th day of April, 1922, in that certain suit  
in equity numbered 501 on the docket of this court, wherein the  
Oklahoma Natural Gas Company, a corporation, is plaintiff, and  
you are defendants and appellees, and show cause, if any  
2 there be, why the decree rendered against the said appellant,  
as in said order allowing appeal mentioned, should not be  
corrected, and why justice should not be done to the parties in that  
behalf.

Witness the Honorable John H. Cotteral, United States District  
Judge for the Western District of Oklahoma, this 5th day of May,  
1922.

JOHN H. COTTERAL,  
*United States District Judge for  
the Western District of Oklahoma.*

Service of the above citation accepted this 6th day of May, 1922.

CAMPBELL RUSSELL,

ART L. WALKER,

E. R. HUGHES,

By E. S. RATLIFF AND

HENRY G. SNYDER,

*Their Attorneys of Record.*

GEORGE F. SHORT,

*Attorney General,*

By R. A. GALBRAITH,

*Assistant Atty. General.*

By ———,

*City Attorney.*

By ———,

*City Attorney.*

3 [Endorsed:] In Equity. No. 501. In the District Court of the United States for the Western District of Oklahoma. Oklahoma Natural Gas Company, a corporation, Complainant, vs. Campbell Russell, Art L. Walker, E. R. Hughes et al., Defendants. Citation. Filed May 10, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy. Ames, Chambers, Lowe & Richardson, Attorneys and Counsellors at Law, Oklahoma City, Okla.

4 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and George F. Short, Attorney General of Oklahoma, and The City of Tulsa, a Municipal Corporation, and I. J. Underwood, Its City Attorney, and The City of Sapulpa, a Municipal Corporation, and Leroy J. Burt, Its City Attorney, Defendants.

*Citation.*

To Campbell Russell, Art L. Walker, and E. R. Hughes, constituting the Corporation Commission of Oklahoma, and George F. Short, Attorney General of Oklahoma, and the City of Tulsa and I. J. Underwood and the City of Sapulpa and Leroy J. Burt, Greeting:

You are hereby cited and admonished to be and appear in and before the Supreme Court of the United States to be held in the City of Washington in the District of Columbia on the 5th day of June, 1922, pursuant to an order allowing an appeal filed and entered in

the office of the clerk of the District Court of the United States for the Western District of Oklahoma from an interlocutory decree denying an application for a temporary injunction signed, filed and entered on the 27th day of April, 1922, in that certain suit in equity numbered 501 on the docket of this court, wherein the Oklahoma Natural Gas Company, a corporation, is plaintiff, and you are defendants and appellees, and show cause, if any there be, why the decree rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected, and why justice should not be done to the parties in that behalf.

Witness the Honorable John H. Cotteral, United States District Judge for the Western District of Oklahoma, this 5th day of May, 1922.

JOHN H. COTTERAL,  
*United States District Judge for  
the Western District of Oklahoma.*

Service of the above citation accepted this 8th day of May, 1922.

CITY OF SAPULPA,  
By H. A. McCAULEY,  
Mayor,  
By LEROY J. BURT,  
City Attorney.

[Endorsed:] Filed May 10, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

6 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and George F. Short, Attorney General of Oklahoma, and the City of Tulsa, a Municipal Corporation, and I. J. Underwood, Its City Attorney, and The City of Sapulpa, a Municipal Corporation, and Leroy J. Burt, Its City Attorney, Defendants.

*Citation.*

To Campbell Russell, Art L. Walker, and E. R. Hughes, constituting the Corporation Commission of Oklahoma, and George F. Short, Attorney General of Oklahoma, and the City of Tulsa and I. J. Underwood and the City of Sapulpa and Leroy J. Burt, Greeting:

You are hereby cited and admonished to be and appear in and before the Supreme Court of the United States to be held in the City

of Washington in the District of Columbia on the 5th day of June, 1922, pursuant to an order allowing an appeal filed and entered in the office of the clerk of the District Court of the United States for the Western District of Oklahoma from an interlocutory decree denying an application for a temporary injunction signed, filed and entered on the 27th day of April, 1922, in that certain suit in equity numbered 501 on the docket of this court, wherein the Oklahoma

7 Natural Gas Company, a corporation, is plaintiff, and you are defendants and appellees, and show cause, if any there be, why the decree rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected, and why justice should not be done to the parties in that behalf.

Witness the Honorable John H. Cotteral, United States District Judge for the Western District of Oklahoma, this 5th day of May, 1922.

JOHN H. COTTERAL,  
*United States District Judge for  
the Western District of Oklahoma.*

Service of the above citation accepted this 9th day of May, 1922.

CITY OF TULSA,  
By I. J. UNDERWOOD,  
*City Attorney.*

I. J. UNDERWOOD,  
BIDDISON & CAMPBELL,  
By A. J. BIDDISON,  
*Attys. for City of Tulsa.*

[Endorsed:] Filed May 10, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

8 In the District Court of the United States for the Western District of Oklahoma.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and S. P. Freeling, Attorney General of Oklahoma, and The City of Tulsa, a Municipal Corporation, and Frank E. Duncan, Its City Attorney, and The City of Sapulpa, a Municipal Corporation, and Leroy J. Burt, Its City Attorney, and The City of Claremore, a Municipal Corporation, and P. W. Holtzendorff, Its City Attorney, Defendants.

*Bill of Complaint.*

The complainant, Oklahoma Natural Gas Company, complains of the defendants, Campbell Russell, Art. L. Walker, E. R. Hughes,

S. P. Freeling, the City of Tulsa, Frank E. Duncan, the City of Sapulpa, Leroy J. Burt, the City of Claremore, and P. W. Holtzendorff, and for cause thereof complainant alleges:

Complainant is a corporation organized under the laws of the State of Oklahoma, and is engaged in the public business of furnishing natural gas to the public in certain portions of said State hereinafter named for light, fuel, heat and power purposes.

The defendants Campbell Russell, Art L. Walker and E. R. Hughes are residents and inhabitants of the Western District of Oklahoma; and they are the duly elected, qualified and acting members of the Corporation Commission of the State of Oklahoma;

9 and as such they are vested by the Constitution and laws of said State with the power to make orders fixing and establishing the rates which complainant shall charge in its said business; and by the Constitution and laws of said State the said Corporation Commission is given power to enforce its said orders fixing and establishing complainant's rates by assessing against complainant a fine in the sum of five hundred dollars for each and every violation of any of said orders.

The defendant S. P. Freeling is a resident and inhabitant of the Western District of Oklahoma, and is the duly elected, qualified and acting Attorney General of the State of Oklahoma, and as such is the chief law officer of said State, and is authorized by law to institute and carry on proceedings for the enforcement of the orders and regulations of said Corporation Commission.

The defendant the City of Tulsa is a municipal corporation of the State of Oklahoma situated in the Eastern District of said State, and the defendant Frank E. Duncan is the duly appointed, qualified and acting City Attorney of said City, and is a resident and inhabitant of the Eastern District of the State of Oklahoma, and is the chief law officer of said City of Tulsa; and the said City of Tulsa and the defendant Frank E. Duncan as its city attorney each has power to, and unless prohibited, will institute and carry on proceedings for the enforcement of the rates hereinafter mentioned prescribed by said Corporation Commission to be charged by complainant in said City of Tulsa for natural gas.

The defendant City of Sapulpa is a municipal corporation of the State of Oklahoma, situated in the Eastern District thereof, and the defendant Leroy J. Burt is an inhabitant of the Eastern District of

10 Oklahoma, and is the duly appointed, qualified and acting City Attorney of the City of Sapulpa; and said City of Sapulpa and its said City Attorney each have power to, and unless prohibited, will institute and carry on proceedings for the enforcement of the rates hereinafter mentioned prescribed by said Corporation Commission to be charged by complainant for natural gas in said City of Sapulpa.

The defendant the City of Claremore is a municipal corporation of the State of Oklahoma, situated in the Eastern District thereof; and the defendant P. W. Holtzendorff is an inhabitant of the Eastern District of Oklahoma, and is the duly appointed, qualified and acting City Attorney of said City of Claremore; and said City of

Claremore and said P. W. Holtzendorff as such City Attorney each have power to, and unless prohibited, will institute and carry on proceedings for the enforcement of the rates hereinafter mentioned prescribed by said Corporation Commission to be charged by complainant for natural gas in said City of Claremore.

This suit is one arising under the Constitution of the United States, and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand (\$3,000.00) Dollars.

Complainant's authorized capital stock is \$15,000,000. of which amount stock of the par value of \$14,300,000 has been issued and is now outstanding. Complainant has now outstanding \$1,010,000.00 of bonds, and it has a floating indebtedness in the sum of \$2,244,761, all of which and much more has been invested in property used and useful in rendering complainant's said public service.

The nature of complainant's business is that of a public service corporation or a public utility, as defined by the Constitution and laws of the State of Oklahoma; and for the purpose of carrying on its said business it owns and uses gas leases and gas wells, gas gathering lines, transmission lines and systems, compressor stations, regulator stations, rights of way, distributing lines and systems, and many other items of property both real and personal; and the present fair value of complainant's property used and useful in rendering its said public service is not less than the sum of \$20,000,000.

Complainant's property is divided into five separate divisions, as follows: First, its production, transmission and distribution property in what is known as its principal system, which is used and useful in furnishing natural gas to the residents of the following named towns and cities in the State of Oklahoma, in which said towns and cities complainant also owns the distributing systems, to-wit: Porter, Haskell, Coweta, Dawson, Tulsa, Turley, Red Fork, Sapulpa, Kellyville, Depew, Shamrock, Stroud, Davenport, Chandler, Midlothian, Meeker, Wellston, Luther, Arcadia and Edmond; and in addition thereto the complainant furnishes by and through the production and transmission portions of its said principal system natural gas to the Muskogee Gas & Electric Company, which distributes the same in the City of Muskogee; to the Midfield Gas Company which distributes the same in the Town of Oilton; to the Shawnee Gas & Electric Company which distributes the same in the City of Shawnee; to the Guthrie Gas, Light, Fuel and Improvement Company which distributes the same in the City of Guthrie; to the Oklahoma Gas & Electric Company which distributes the same in the towns and cities of Oklahoma City, El Reno, Yukon and Britton; and to the Southwestern Gas & Fuel Company which distributes the same in the cities of Duncan and Marlow. Heretofore complainant has also furnished gas to the Commonwealth Public Service Company, which distributed the same in the City of Wagoner. Said Commonwealth Public Service Company, however, has recently discontinued taking gas from complainant, and it is undertain whether complainant will hereafter furnish gas to be distributed

12 in the City of Wagoner. Complainant's transmission lines in its said principal system run from Wagoner and Muskogee in the eastern portion of the State of Oklahoma to the City of Tulsa, and thence through Oklahoma City to the southwestern part of the State of Oklahoma, to what is known as the Walters gas field; and from said main transmission line there are many lines extending laterally.

The next largest division of complainant's property is what is known as the Enid system, which extends from a point in the southern portion of Kansas to the City of Enid in Oklahoma, and with which division complainant furnishes gas to the towns of Peckham, Nardin, Deer Creek, Lamont, Pond Creek and Hunter, in which said towns complainant also owns the distributing systems; and with this system complainant also furnishes gas to the Oklahoma Gas & Electric Company which distributes the same in the City of Enid.

The next largest division of complainant's property is that which is used for furnishing gas in the City of Claremore. With the other two divisions of plaintiff's property gas is furnished in the towns of Ramona and Inola.

From September 1, 1919, to April 1, 1920, complainant's rates for gas in all the towns and cities served directly by it on all its systems, and also the rates for gas of each of the independent distributing companies hereinbefore named which obtained their gas from complainant, as fixed by said Corporation Commission, were as follows:

First 100,000 cu. ft. per month 40¢ per M net,  
Next 400,000 cu. ft. per month 32¢ per M net,  
All over 500,000 cu. ft. per month 25¢ per M net,

and complainant was paying in the field six cents per thousand cubic feet, measured at the mouth of the wells, for all the gas which it purchased, and its said schedule of rates then in force was purported to be based upon complainant's being required to pay six cents per thousand in the field for the gas which it purchased; but

13 the quantity of gas available to complainant was not sufficient to supply adequately the needs and demands of its patrons. Also, until July 1, 1921, the price which complainant received for the gas which it furnished to the independent distributing companies hereinbefore named, to be by them sold and distributed in the towns and cities which they served was two-thirds of the collections made by said distributing companies for the gas sold for domestic purposes, and three-fourths of the collections made by them for the gas sold for industrial purposes. In March, 1920, complainant found an opportunity to purchase an additional supply of natural gas amounting to approximately twenty million cubic feet per day; but it was able to purchase the same only by paying therefor ten cents per thousand cubic feet measured at the wells. Accordingly, to enable complainant to purchase said additional supply of gas and to pay the increased price therefor, the Corporation Commission, considering the complainant's division of the pro-

ceeds received for gas and the matter of leakage, temporarily increased complainant's rates for gas, except on the Enid system, to the following schedule, to-wit:

First 100,000 cu. ft. per month 48¢ per M net,  
Next 400,000 cu. ft. per month 40¢ per M net,  
All over 500,000 cu. ft. per month 33¢ per M net,

but, it having been made known to the Commission that complainant contended that all its rates were grossly inadequate, and that complainant contemplated the early filing of an application for a general increase in rates, the Commission provided in its said order that said increase in rates should be temporary only, and should be in effect only until November 1, 1920, or until further ordered by the Commission.

Complainant caused its property to be inventoried and appraised by engineers, auditors and accountants employed by it, and said Corporation Commission also caused complainant's properties to be inventoried and appraised by its own engineers, and on August 5, 1920, complainant filed with said Corporation Commission an application for a general increase in all its rates upon all its systems, and, among other relief sought, it prayed said Corporation Commission to fix a flat price at the town borders at which it should furnish gas to the local independent distributing companies hereinbefore named which complainant was then furnishing with gas for a percentage of the collections made as hereinbefore set out.

When said application came on for hearing the City of Claremore appeared and represented to said Commission that it was not on complainant's principal system, and that it desired the cause as to the City of Claremore and the system which served it to be heard separately. Accordingly said Commission directed that said application be continued, not only as to the Claremore system, but also as to the Ramona and Inola systems, until after the hearing as to the principal system. But the City of Enid, through its attorneys, consenting that the Enid system and the principal system should be treated and considered as one property and should be valued together, the Commission heard said application as to those two systems together, and treated the production and transmission property of both systems as one property in the order it subsequently made. As to the Claremore and Inola systems, complainant's application has not been heard to this day, and has not been set for hearing.

On December 20, 1920, the hearing of said cause not having been completed, but it being made to appear to the Commission by the evidence introduced in said case that the complainant's financial condition was desperate, as was the fact, said Commission made a temporary order, fixing the rates to be charged by complainant in all towns and cities served by it directly, excepting Claremore, Inola and Ramona, and the rates to be charged by all local independent distributing systems who received their gas from complainant, excepting the town of Carney, and the Southwestern Oklahoma Gas & Fuel Company which served the cities of Duncan and Marlow, at the following rates, to-wit:

First 100,000 cu. ft. per month 58¢ per M net,  
Next 400,000 cu. ft. per month 50¢ per M net,  
All over 500,000 cu. ft. per month 40¢ per M net,

and it was provided in said order that the same should be in effect only until March 31, 1921, and pending the final hearing and determination of said cause; and that in the towns and cities served by the local independent distributing companies which obtained their gas from complainant the excess in said schedule of rates over those theretofore in effect should be paid to complainant, and that said increase should not be shared by the local independent distributing systems. Said temporary order so made by said Corporation Commission, however, never became effective, for the reason that the Supreme Court of Oklahoma granted a writ of prohibition against its enforcement.

Complainant's said application to said Commission was not finally determined until June 25, 1921, and before the determination thereof the said order so made on March 11, 1920, and effective April 1, 1920, putting into effect the increased rates because of the increased price which complainant was required to pay for gas, lapsed, and complainant's rates reverted to those theretofore in effect, namely:

First 100,000 cu. ft. per month 40¢ per M net,  
Next 400,000 cu. ft. per month 32¢ per M net,  
All over 500,000 cu. ft. per month 25¢ per M net,

and said Commission permitted said rates to lapse to said last named schedule, and directed that said last named schedule be in effect, notwithstanding, on October 1, 1920, this complainant was required to and did increase the price which it paid for all its gas which it purchased everywhere in the State of Oklahoma to ten cents per thousand cubic feet, which price it has been paying ever since.

On June 25, 1921, the Corporation Commission of Oklahoma made and promulgated its final order, numbered 1886, upon complainant's application for increased rates, except as to Claremore, Inola and Ramona; and said Corporation Commission therein found that it was to the public interest that complainant charge and receive a flat price per thousand cubic feet at the town borders for all gas which it furnished to local independent distributing companies, and it so ordered; and for the purpose of determining what said flat price or city gate rate should be, and also for the purpose of determining the cost of gas to each distributing system owned by complainant as a basis for the fixing of proper rates in each of said distributing systems, said Commission purported to determine separately on the one hand the value of complainant's production and transmission property which was used and useful in producing and transporting the gas to the borders of the towns and cities, and its expenses in so doing; and, for the purpose of determining complainant's distributing rates, that is, the rates which complainant's distributing plants should receive for gas in the towns and cities served by them, it also purported to de-

termine the value of complainant's distributing property in each of said towns and cities.

That portion of said Commission's order prescribing and fixing the city gate or town border rate which should be paid to complainant's said production and transmission systems for the gas by said systems furnished to the distributing plants at the borders of each town and city served, is in words and figures as follows, to-wit:

"The said city gate rate is hereby fixed at the sum of twenty-five cents net per thousand cubic feet, to be measured at the borders or boundaries of each town and city; provided, however, that for the gas bought by the distributing companies and by them sold to patrons or customers using more than 500,000 cubic feet each month, the distributing companies shall pay to the Oklahoma Natural Gas Company only the sum of twenty cents net per thousand cubic feet for the gas used by each consumer of each distributing company in excess of 500,000 cubic feet per month. Each distributing  
17 company shall keep a true and correct record of the monthly consumption of gas of each of its patrons who uses more than 500,000 cubic feet in each month, and of the amount of gas in excess of 500,000 cubic feet used by each such patron in each month, to which records and all data sustaining the same the Oklahoma Natural Gas Company, its auditors or other agents, shall have access for the purpose of examining and auditing the same. The amount of gas actually used by each patron over and above 500,000 cubic feet each month shall be paid for by each distributing company to the Oklahoma Natural Gas Company at the rate of twenty cents net per thousand cubic feet. All the remainder of the gas measured by the Oklahoma Natural Gas Company into the lines of the distributing companies shall be paid for by the distributing companies to the Oklahoma Natural Gas Company monthly at the rate of twenty-five cents net per thousand cubic feet. This reduction in the price of the gas furnished by the distributing companies to large users is made to enable the distributing companies to make a lower rate for industrial gas; but there is no reduction as to the first 500,000 cubic feet purchased for each such user, the reduction being only on the quantity used by each such user in excess of the 500,000 cubic feet in one month."

With respect to the rates for gas in complainant's various distributing plants, said Commission's order was in words and figures as follows, to-wit:

"The Commission finds that the cost of the properties used and useful in supplying gas in the towns and cities served directly by the Oklahoma Natural Gas Company at December 31, 1920, including reasonable allowances for amortization, engineering, supervision, interest during construction, legal expenses, accounting, casualties, incidentals and every conceivable intangible expense, going concern value and working capital, to be as follows:

Arcadia .....	\$5,753.45
Chandler .....	59,724.26
Coweta .....	30,196.26
Depew .....	9,461.60
Davenport .....	10,262.18
Deer Creek .....	4,242.11
Edmond .....	51,185.46
Haskell .....	44,858.58
Hunter .....	9,852.32
Kellyville .....	8,099.33
Lamont .....	15,067.97
Luther .....	6,827.30
Meeker .....	9,140.68
Midlothian .....	2,371.25
Nardin .....	4,812.84
Peckham .....	4,035.00
Pond Creek .....	20,808.28
18 Porter .....	12,513.36
Sapulpa .....	260,534.19
Shamrock .....	20,846.90
Stroud .....	32,585.42
Dawson .....	1,411,556.46
Turley .....	
Red Fork .....	
Tulsa .....	
Wellston .....	11,963.74

"The Commission further finds that in order to allow a rate of return of 8% and to create a fund for depreciation amounting to 5% and to enable the company to serve the public efficiently, it is necessary to establish the following schedule of rates:

	Domestic.	Industrial.
Arcadia .....	55¢	25¢
Chandler .....	55¢	25¢
Coweta .....	55¢	25¢
Depew .....	50¢	25¢
Davenport .....	55¢	25¢
Deer Creek .....	45¢	25¢
Edmond .....	50¢	25¢
Haskell .....	50¢	25¢
Hunter .....	50¢	25¢
Kellyville .....	50¢	25¢
Lamont .....	47¢	25¢
Luther .....	50¢	25¢
Midlothian .....	55¢	25¢
Meeker .....	45¢	25¢
Nardin .....	45¢	25¢
Peckham .....	55¢	25¢
Pond Creek .....	49¢	25¢
Porter .....	55¢	25¢

	Domestic.	Industrial.
Sapulpa .....	47¢	25¢
Shamrock .....	45¢	25¢
Stroud .....	55¢	25¢
Dawson .....	42¢	25¢
Red Fork .....	42¢	25¢
Turley .....	42¢	25¢
Tulsa .....	42¢	25¢
Wellston .....	52¢	25¢

"The rate for industrial gas shall not be available for quantities less than 500,000 cubic feet used by one consumer during one month, that is the minimum charge for industrial gas shall be 500,000 cubic feet at the domestic rate. These are cash rates contingent upon the payment of bills therefor on or before the tenth day after rendition. On any bills not so paid an additional charge of 2¢ per M cubic feet will be made.

"This order and the rates and charges therein contained to be in full force and effect from and after the first day of July, 1921."

On July 15, 1921, said Commission made retroactive supplemental orders, effective as of July 1, 1921, modifying the distributing rates in the towns of Depew, Edmond, Haskell, Hunter, Kellyville, Luther, Arcadia, Chandler, Coweta, Davenport, Midlothian, Peckham, Stroud and Porter, and fixing the following as the distributing rates in said towns, to-wit:

- 50 cents per M for first 100,000 cu. ft. per month.
- 40 cents per M for next 400,000 cu. ft. per month.
- 25 cents per M for all over 500,000 cu. ft. per month.

Complainant further shows that each and all of the foregoing rates so fixed and prescribed by said Corporation Commission in its said order, including both said city gate or town border rates for complainant's production and transmission systems, and the said distributing rates as originally made and as modified, were and are grossly inadequate, unremunerative, and confiscatory in their effect upon complainant, and operate and will operate to deprive complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. From said order complainant has appealed to the Supreme Court of Oklahoma, and said appeal is pending and undetermined, and will not be determined for many months to come. Compliance with said order on complainant's part pending the hearing and determination of said appeal in said Supreme Court is being enforced against complainant, and will be enforced by said Corporation Commission by the assessment against this complainant of the enormous penalty of five hundred dollars for each and every violation of said order; and neither the Constitution nor the laws of the State of Oklahoma make any provision whereby this complainant can suspend the enforcement of said order and increase its said rates pending the hearing and

determination of said appeal; so that, unless this court will enjoin the enforcement of said order, this complainant is without remedy in the premises pending the hearing and determination of said appeal, and must continue to submit to the confiscation of its property during said time.

This complainant further shows that as to its said production and transmission systems the said order of said corporation Commission is confiscatory in its nature and in its effect upon this complainant, and deprives this complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, in this, to-wit:

The undepreciated reproduction value of complainant's production and transmission property used and useful in its principal system and in its Enid system, on October 31, 1919, the date said inventory and appraisal were completed, exclusive of going concern and working capital, was \$28,758,450.60, from which removals were made between October 31, 1919, and May 31, 1920, aggregating in value \$508,751.79, leaving an undepreciated reproduction value of \$28,249,698.81. The depreciation was 18%, making the actual reproduction value the sum of \$23,164,753.02. Between October 31, 1919, and January 1, 1921, necessary additions were made to said systems costing complainant the sum of \$1,232,384.14, and which, assuming that the reproduction value on January 1, 1921, was as great as on October 31, 1919, would make a value on January 1, 1921, of \$24,397,137.16. There had been some decline in the cost of labor and materials by January 1, 1921, but on said last named date and at this time the fair value of complainant's said production and transmission property, reckoned on the basis of what it would cost to reproduce the same and considering its then condition, and excluding going concern value and working capital, was and is in excess of \$20,000.00.

The original cost of complainant's said production and transmission property, including additions made up to January 1, 1921, was \$15,216,907.64.

The going concern value of complainant's said property, that is to say, the excess of the value of said property as a going concern, with the various units comprising the same installed, assembled, coordinated, and in working order and with an established business, over the aggregate value of all the installed units considered separately, was and is 15% of its original cost.

Complainant's taxes and other out of pocket expenses for its said production and transmission systems for the year ending October 31, 1921, were \$3,814,422.09; and this was exclusive of depreciation, amortization, interest or dividend on the investment, and the expense of building new lines to new gas fields.

During the year beginning November 1, 1920, and ending October 31, 1921, the distributing plants served by complainant's said production and transmission systems sold for domestic use 9,100,443 M cubic feet of gas, and for industrial use 1,963,004 M cubic feet. The leakage in said distributing plants is 20% of the gas annually delivered into them; so that in order that said distributing

plants might sell during said year 9,100,443 M cubic feet of gas for domestic purposes, it was necessary that they procure from complainant's said production and transmission systems 11,375,554 M cubic feet, which, at said 25 cents city gate rate so fixed by said Corporation Commission for domestic gas, would have brought said production and transmission systems \$2,843,888.50. In order that said distributing plants might sell 1,963,004 M cubic feet of gas for industrial purposes, it was necessary that they procure from complainant's said production and transmission system 2,453,755 M cubic feet, which, at the 20 cent city gate rate fixed by said Corporation Commission for industrial gas would have brought said production and transmission systems \$490,751.00, making a total of \$3,334,639.50 received by complainant's said production and transmission property from said distributing plants for gas. In addition thereto, during said year complainant's said production and transmission property sold 2,633,348 M cubic feet of gas in the oil and gas fields for well-drilling purposes, and received therefor \$756,791.71, and it also sold to domestic consumers on its field lines, not in any city or town, 53,428 M cubic feet, and received therefor \$22,070.69, making a total gross income from the sale of gas by said production and transmission systems of \$4,113,501.90, thus leaving complainant a net income on its said production and transmission property for said year of only \$299,079.81, with which to pay interest or dividend on the investment, take care of depreciation, and amortize the said investment against the time the supply of gas available for said properties will be exhausted.

Complainant further shows that even on the basis of the original cost of its said production and transmission property, and omitting all consideration of the present fair value of said property, said town border or city gate rates so fixed are confiscatory and deprive complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, as shown by the following value, to-wit:

Original cost of production and transmission system	\$15,216,907.64
Going Concern Value, 15% .....	2,282,536.15
Working Capital—1½ months' expense .....	494,382.39
Total Value or Rate Base .....	\$17,993,826.18

Complainant further states that its sales of gas are constantly decreasing each year. In the year 1917 it sold 29 billion cubic feet of natural gas. In 1918 it sold 27,225,102 M cubic feet of gas. In 1919 its total sales of gas were 21,997,179 M cubic feet. In the calendar year 1920 its total sales of gas in all its properties were 20,030,706 M cubic feet. For the year beginning November 1, 1920, and ending October 31, 1921, its total actual sales of gas from all of its properties in the State of Oklahoma, including the Claremore, Inola and Ramona systems, for all purposes, amounted to 13,740,290 M cubic feet.

Complainant further shows that it has operated under said rates so fixed by said Corporation Commission in said order No. 1886 since July 1, 1921, in all its own distributing systems, and as to all other cities supplied by it except those in which the Oklahoma Gas & Electric Company owns the distributing plants, and the result of its said operation under said rates, and of said rates as applied to the gas furnished said Oklahoma Gas & Electric Company, has been that complainant's actual out of pocket expenses have exceeded its gross income during said period of time in the sum of approximately \$75,000.00 per month.

Complainant further shows that said Corporation Commission, in and by its said order No. 1886 deprived this complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States in that said Commission refused to take and use the reproduction cost of complainant's production and transmission properties, less depreciation, as the basis for complainant's rates, notwithstanding the evidence adduced before said Commission showed without contradiction that the reproduction cost of complainant's property was greatly in excess of the original cost of said production and transmission systems, and considering the vast amount of new construction which complainant had added to said property during the last five years, depreciation amounted to only 18%; and said Commission's order operated and operates to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States in that said Commission refused to grant complainant any return on the value of its property as of the time the inquiry was made and the case heard, but took less than the original cost thereof as the rate base, thereby leaving properties and values belonging to complainant and used and useful in rendering its public service upon which no return was purported to be given.

Complainant further shows that the uncontradicted evidence in said hearing was that the going concern value of complainant's property, that is, the value of complainant's property as a going concern, with the various units composing said property installed, assembled, co-ordinated, and in working order and with an established business, was 15% greater than the aggregate value of all the installed units considered separately. But in determining what complainant's production and transmission property should earn, said Commission purported to allow a going concern value of only 10%, and in fixing and prescribing the rate to be charged by complainant it in fact allowed no going concern value whatsoever. And complainant says that said Commission in refusing to allow said sum of 15% as going concern value in fixing the complainant's rate base deprived complainant of the said going concern value without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States by depriving complainant of any return thereon.

Complainant further shows that the business of producing and transporting natural gas for public use combines a public service with a mining venture and is the most hazardous of all kinds of public service. All other public utilities, with the exception of water companies, manufacture the basic element of their service, and the duration of their business has no natural limitation, and their owners run no risk of a sudden loss of their investment. And as to water companies, their supply is constantly replenished by nature, by the falling of rains and the melting of snows. Natural gas, however, cannot be made by man, the supply is limited and exhaustible, and when once exhausted is never regenerated. And when the available supply is exhausted, the natural gas company's business is at an end, and its investment for the purpose of producing and transporting natural gas becomes worthless except for what it will bring as junk.

Complainant further shows that the life of gas wells and gas fields in the State of Oklahoma is very short, and the supply of gas in said state is nearing exhaustion. The United States Geological Survey asserts that the supply of gas in the Mid-continent field, in which Oklahoma is situated, is already more than five-sixths exhausted, and that that includes all known fields of gas and  
25 all probable undiscovered fields. Complainant has been required to increase its investment year after year, not for the purpose of obtaining new or additional patrons or increasing the volume of business done by it, but merely for the purpose of continuing to furnish a constantly diminishing quantity of gas to those it was already obligated to serve. By the year 1917 complainant's supply of gas was inadequate, and in order to augment the same complainant was required to build new pipe lines to new fields, which it did, at a cost of \$974,473.09 of new money furnished by its stockholders. Complainant's net earnings in its entire production, transmission and distributing business for the year 1917, after deducting its usual and ordinary operating and maintenance expenses, but making no allowance for either depreciation or amortization were \$78,767.58, and the expenditures in new lines *was* not reckoned as an expense, but as an additional investment. In 1918 complainant's net earnings in its entire gas business, after paying its usual and ordinary operating expenses, but making no allowance for either depreciation or amortization, were \$1,225,753.52, but in order to continue to furnish gas, complainant was required in 1918 to build additional pipe lines and compressor stations, which it did at a cost of \$1,632,004.72. The cost of these new pipe lines and compressor stations was not treated as expense, but as an addition to complainant's capital account. In 1919 complainant's net earnings, after paying its taxes and expenses, but making no allowance for depreciation or amortization, were \$1,343,579.33, and in that year plaintiff was required to build new pipe lines to new gas fields, which it did at a cost of \$1,419,667.39. In the year 1920 complainant's net earnings, by making no allowance for amortization or depreciation, were \$1,460,748.02; and the same year complainant was

required to and did build new pipe lines to new fields at a cost to it of \$1,528,195.81. In the years 1917, 1918, 1919, and 1920, complainant's net earnings, by making no allowance for depreciation or amortization, were \$4,108,848.45; and during the same  
26 period plaintiff was required to make an additional investment, in order to continue to sell gas, amounting to \$5,554,341.01, which additional investment was in reality an expense in furnishing gas. During said four years complainant spent for new pipe lines to new gas fields and for compressor stations and in paying its usual and ordinary expenses and taxes \$1,445,491.56 more than were its gross receipts.

The distances which complainant is now required to transport its gas, the enormous increases which it has been required to make in its investment in order to get and furnish gas, the increased cost of gas in the field, and the increase in complainant's operating expenses and taxes caused by the increase in its investment, the far extension of its lines, and the increased number of employees necessary, make the cost of furnishing gas such that complainant can sell but little industrial gas in competition with coal and fuel oil.

All the gas fields from which complainant originally obtained its gas have long since been exhausted, and many other fields to which complainant has built its lines have also been exhausted; and in complainant's best information and belief it will be impossible for it to continue in business for a longer period than eight years from this date; and it is not improbable that that period of time may be cut in half.

Complainant therefore says that considering the risk and hazard involved in said business it is entitled to earn, over and above its expenses, and over and above its depreciation and amortization, ten per cent for dividend or return to its stockholders upon their risky and hazardous investment. Complainant further says that in the State of Oklahoma the legal rate of interest, in the absence of any contract, is six per cent, and that by contract parties are authorized to charge and receive ten per cent per annum; and that ten per cent  
27 per annum is as little as persons who have invested their money in banking, in merchandising, and other such forms of business expect to receive.

Complainant further says that it is also entitled to earn over and above its necessary expenses and dividends, five per cent per annum for depreciation upon its property, and ten per cent per annum to amortize its property against the time when the supply of gas available to complainant will be exhausted, and when complainant's property will become worthless.

Complainant's rates for gas have never been such as to enable it to earn or set aside any sum whatever for depreciation on or amortization of its said property. Under the rates fixed by the Corporation Commission complainant's earnings have not been sufficient with which to build the new lines to new fields which complainant has been required to build in order to continue in business.

Natural gas contains about twice the heating units of artificial gas, and upon the basis of its actual value, as compared with artificial gas, is intrinsically worth to the domestic consumer two dollars a thousand.

Complainant is required to purchase its gas in the northern and northeastern portions of Oklahoma in competition with the Kansas Natural Gas Company, the Empire Gas Company and the Wichita Gas Company, which purchase gas in Oklahoma, and transport the same to Kansas and Missouri, which said companies receive for their said gas in Kansas and Missouri, as complainant is informed and believes, rates ranging from 56 cents to one dollar per thousand. Complainant is also required to purchase its gas in the Walters gas field in southern Oklahoma in competition with the Lone Star Gas Company, which buys gas in that field, and transports same to Texas, no further than the complainant is required to transport its gas, and which company receives in Texas a net domestic rate therefor of 67½ cents per thousand.

Complainant avers that said order No. 1886 of said 28 Corporation Commission prescribing a city gate or town border rate of 20 cents per thousand cubic feet for gas furnished to the distributing plants and by them sold for industrial use, and 25 cents per thousand cubic feet for all other gas furnished to said distributing plants, are grossly inadequate and unreasonable, and are confiscatory in their operation and effect upon complainant and its business and property, and operate to deprive said complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Distributing Systems.

##### Tulsa.

Complainant alleges that the reproduction value of its distributing system in the City of Tulsa at the time said cause was heard by said Commission, including going concern value and working capital, and less depreciation, was \$2,238,681.62; and that the present fair value of said property is the sum of \$1,736,670.57.

During the year beginning November 1, 1920, and ending on October 31, 1921, complainant's distributing plant in Tulsa sold for domestic use in said city 2,547,184 M cubic feet of natural gas, and for industrial use 367,623 M cubic feet.

Complainant's distributing expenses and taxes in the City of Tulsa during the year ending October 31, 1921, were \$184,949.15, exclusive of the cost of gas.

Tulsa is a city of 75,000 inhabitants, and practically all the streets and alleys therein, under which complainant's distributing system is laid, are paved. When the natural gas available for said city is exhausted complainant's said distributing system may be useful for artificial gas, though complainant has no franchise in the City of Tulsa for the furnishing of artificial gas. Moreover, before com-

29 plainant's system could be used for artificial gas, it would be necessary that plaintiff expend the sum of from \$300,000 to \$500,000 upon said plant for the purpose of putting the same in condition for artificial gas, in addition to correcting the leakage therein, and when complainant should go to artificial gas, it would lose all its industrial business, and in addition thereto complainant would lose all its heavy heating business, and the business which complainant would be able to do in said city of Tulsa would be restricted to furnishing artificial gas for cooking purposes and incidental hot water heating purposes; and plaintiff would lose half of the customers which it now has in the City of Tulsa even for cooking and incidental hot water heating purposes; and for said reason complainant is entitled to an earning of five per cent upon its said investment for the purpose of amortizing, against the time when the supply of natural gas available for said city is exhausted, its distributing plant in the City of Tulsa to an artificial gas basis, which is estimated to be one-half the value of the distributing system. Complainant further states that it is entitled to an earning of at least five per cent for depreciation, and an additional earning of nine per cent with which to pay to its stockholders interest or dividend upon the said value of said property.

Complainant further states that the leakage of gas in its said distributing system in the City of Tulsa, and in all of its other distributing systems hereinafter named, was and is in excess of twenty per cent of the amount of gas annually delivered into said distributing systems. The Corporation Commission of Oklahoma has never heretofore fixed any standard of leakage, and complainant's rates in Tulsa have been such that it has never been able to earn any sum in said city of Tulsa or in any other of its distributing systems for the purpose of amortizing its property, for the purpose of taking care of depreciation, or for the purpose of correcting its said leakage, and it has therefore had no fund with which to correct said 30 leakage. Complainant further shows that inasmuch as its distributing system in Tulsa is covered with pavement, the correction of said leakage in said city would be enormously expensive, and would cost approximately as much as it would to rebuild complainant's said system.

Complainant further shows that in fixing its said rates in the City of Tulsa the said Corporation Commission, although it knew that complainant's leakage exceeded said amount, and said Commission had theretofore never fixed any standard of leakage, professed to allow complainant a leakage of only 10%, and in the rates fixed said Commission in fact allowed complainant no leakage whatsoever.

Complainant further says that, considering leakage, in order that its distributing plant in Tulsa might sell in said city the said 2,547,184 M cubic feet of domestic gas, it was necessary that said plant procure 3,183,980 M cubic feet, which, even at the 25 cent city rate rate fixed by said Corporation Commission, would have cost \$745,995.00. Also, in order that said distributing plant might sell 367,623 M cubic feet of gas for industrial purposes, it was necessary that it procure 459,529 M cubic feet, which, even at the twenty cent

city gate rate so fixed by said Commission for industrial gas, would have cost said distributing plant \$91,905.80, making a total cost for gas of \$887,900.80, and which, together with said plant's other distributing expenses and taxes hereinbefore stated, would have made a total annual expense of \$1,072,849.95. From the gas sold at the distributing rates fixed by said Corporation Commission said plant would have received a gross income of \$1,161,623.08, making a net income of only \$88,773.13, with which to pay dividend or interest upon complainant's investment in said city, and with which to take care of depreciation, create a fund for amortization, and to undertake to correct the leakage in said system.

Complainant alleges that said distributing rates so fixed by said Corporation Commission for said City of Tulsa, even on the  
31 basis of said distributing system purchasing its gas at the 20 and 25 cent city gate rate, is grossly inadequate, unremunerative and confiscatory in its effect, and operates to deprive complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Sapulpa.

The reproduction cost of complainant's distributing plant in Sapulpa at the time of said hearing before said Corporation Commission, including going concern value and working capital, and less depreciation, was \$393,353.09. The present fair value of complainant's distributing plant in said City of Sapulpa is \$315,611.18.

Complainant has spent large sums of borrowed money in undertaking to correct the leakage in said City of Sapulpa, but the leakage in said city still equals twenty per cent of the amount of gas annually delivered into said system; and complainant makes the same averments with respect to said leakage and with respect to return in the City of Sapulpa, and its past inability to earn and have a fund for the purpose of correcting said leakage and for the purpose of depreciation and amortization that is made with respect to said City of Tulsa.

During the year beginning November 1, 1920, and ending on October 31, 1921, complainant's distributing plant in Sapulpa sold for domestic use in said city 407,282 M cubic feet of natural gas, and for industrial use 10,945 M cubic feet.

In order that complainant's said distributing plant might sell 407,282 M cubic feet of gas in Sapulpa during said year for domestic purposes, it was necessary, because of the leakage and shrinkage, that it acquire 509,103 M cubic feet, which, even at the 25 cent city gate  
32 rate so fixed by said Corporation Commission, would have cost complainant \$127,275.75. In order that complainant might sell in said distributing plant 10,945 M cubic feet of industrial gas, it was necessary, because of the leakage, that it acquire 13,681 M cubic feet, which, even at the 20 cent city gate rate so fixed by said Corporation Commission, would have cost complainant \$2,736.20, making a total cost for gas during said year at said city gate rate of \$130,011.95.

Complainant's distributing expenses and taxes in the City of Sapulpa during the year ending October 31, 1921, were \$38,768.85, making a total expense of said plant for said year, including cost of gas, of \$168,780.80.

The gross income from the sale of said gas at the 47 cent domestic and the 25 cent industrial rate so fixed by said Corporation Commission, would have been \$194,158.74, leaving complainant a net income in said plant of only \$25,377.94, with which to pay interest or dividend upon its said investment in said City of Sapulpa, and with which to take care of depreciation, create a fund for amortization and to correct leakage.

An artificial gas plant can not be operated in Sapulpa profitably when natural gas is gone, and for that reason complainant is entitled to amortize its investment in said distributing system, and it is entitled to an earning of 10% for said purpose, 5% for depreciation, and 10% for interest or dividend on the investment.

Complainant avers that the said rates so fixed by said Corporation Commission in said City of Sapulpa, even upon the basis of the gas costing said distributing system only 25 cents and 20 cents respectively per M at the gates of said city, are grossly inadequate, unremunerative and confiscatory in their effect upon complainant, and operate to deprive complainant of its said property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

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### Arcadia.

The reproduction value of complainant's distributing system in the town of Arcadia at the time said cause was heard by said Commission, including going concern value and working capital, less depreciation, was \$7,514.02. The present fair value of said distribution system, including going concern value and working capital, less depreciation, is \$6,323.17.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing plant in Arcadia sold 6,796 M cubic feet of domestic gas, and 1,183 M cubic feet of industrial gas.

The leakage in complainant's said distributing system was and is in excess of twenty per cent, and complainant's rates in Arcadia have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage, or for creating a fund either for depreciation or amortization.

In order that complainant might sell 6,796 M cubic feet of gas for domestic use in Arcadia, it was necessary, because of the leakage and shrinkage, that its said distributing plant acquire 8,495 M cubic feet, which, even at the city gate rate of 25 cents per M fixed by said Commission, would have cost \$2,123.75. In order that it might sell 1,183 M cubic feet for industrial purposes, it was necessary on account of the leakage and shrinkage, that it buy 1,478 M cubic feet, which, even at the city gate rate of 20 cents fixed by said Commission, would have cost said plant \$295.80, making a total of \$2,419.55 for cost of gas.

Complainant's distributing expenses and taxes in Arcadia during said year ending October 31, 1921, were \$1,125.88, making a total expense, including cost of gas, of \$3,545.43.

Complainant's gross receipts from the sale of said gas at the 55 cent domestic and the 25 cent industrial rates fixed by said Corporation Commission would have been \$4,033.60, leaving a net income of \$488.17 with which to pay interest or dividend on the investment, take care of depreciation, amortize the plant against the time when the gas is exhausted, and correct leakage.

Arcadia is a small town of only a few hundred people, and can not support an artificial gas plant when natural gas available for said town is exhausted; and upon that happening complainant's entire investment in the town of Arcadia will become worthless, and for said reason it is entitled to amortize its entire investment in said town, and is entitled to an earning of ten per cent for said purpose, in addition to an earning of 10 per cent for dividend or return and five per cent for depreciation.

Complainant avers that said rates of 55 cents per M for gas for domestic use and 25 cents per M for gas for industrial use in said town of Arcadia so fixed by said Corporation Commission in said order, and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and that said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Chandler.

The reproduction value of complainant's distributing system in the City of Chandler at the time said cause was heard by said Commission, including going concern value and working capital, and less depreciation, was \$102,927.55. The present value of said distributing system, including going concern value and working capital, and less depreciation, is \$84,382.65.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing plant in Chandler sold for domestic use 60,881 M cubic feet of gas, and for industrial use 46,124 M cubic feet.

The leakage in complainant's said distributing system was and is in excess of 20%, and complainant's rates in Chandler have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or of creating a fund either for depreciation or amortization.

In order that complainant's distributing system in Chandler might sell 60,881 M cubic feet of gas for domestic use during said year, it was necessary because of the leakage and shrinkage that it buy at the city gate 76,101 M cubic feet, which, even at the city gate rate of 25 cents per M fixed by said Commission, would have cost \$19,025.25. In order that it might sell 46,124 M cubic feet for industrial use, it was necessary that it buy 57,655 M cubic feet,

which, even at the city gate rate of 20 cents per M fixed by said Commission, would have cost \$11,531.00, making a total cost of gas to complainant's said distributing system of \$30,556.25.

Complainant's distributing expenses and taxes in Chandler during said year ending October 31, 1921, were \$15,891.67, making a total expense, including cost of gas, of \$46,447.92. Complainant's gross receipts from said gas at the 55 cent domestic and 25 cent industrial rates fixed by said Corporation Commission for said distributing system would have been \$45,015.55, leaving complainant an actual deficit for said year, without considering interest or dividend and depreciation and amortization of \$1,432.37.

Complainant further says that the City of Chandler is not large enough to support an artificial gas plant, and that when natural gas available for said city is exhausted, complainant's entire investment in said city will become worthless, and that for said reason it is entitled to amortize its entire investment in said city, and to have an earning equal to ten per cent of its investment for said purpose, in addition to an earning of ten per cent for dividend and five per cent for depreciation.

Complainant avers that said rates of 55 cents for gas for domestic use and 25 cents for gas for industrial use in said city of Chandler so fixed by said Corporation Commission in its said order, and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and that said order prescribing said rates operates, and if not enjoined, will continue to operate, to deprive complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Coweta.

The Corporation Commission of Oklahoma, in its said order No. 1886, correctly found the fair value of complainant's distributing system in the town of Coweta to be \$30,196.26.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing plant in the town of Coweta sold 29,937 M cubic feet of natural gas for domestic use, and 6,503 M cubic feet for industrial use.

The leakage in complainant's said distributing system was and is in excess of 20% of the amount of gas annually put into said system, and complainant's rates in Coweta have never been such as to enable complainant to earn any sum from the sale of its gas in said system for the purpose of correcting said leakage, or of creating a fund either for depreciation or amortization.

In order that complainant might sell in Coweta 29,937 M cubic feet of domestic gas, it was necessary that its distributing plant acquire at the city gate 37,421 M cubic feet, which, at the city gate rate of 25 cents fixed by said Commission, would have cost complainant's said distributing plant \$9,355.25. In order that it might sell 6,503 M cubic feet for industrial purposes, it was necessary that it receive at the city gate 8,129 M cubic

feet, which, even at the city gate rate of 20 cents per M fixed by said Commission, would have cost complainant \$1,625.80, making a total of \$10,981.05 which said distributing system would have had to expend for gas.

Complainant's distributing expenses and taxes in Coweta during said year ending October 31, 1921, were \$10,141.10, making a total expense, including cost of gas, of \$21,122.15.

Said distributing plant's gross receipts from the sale of said gas at the 55 cent domestic and 25 cent industrial rates fixed by said Corporation Commission would have been \$18,091.15, leaving an actual deficit of \$3,031.00, and nothing for interest or dividend, depreciation, amortization or correction of leakage.

Coweta is a small town, and can not support an artificial gas plant when natural gas available for said town is exhausted, and upon that happening complainant's entire investment in said town will become practically worthless, and that for said reason it is entitled to amortize its entire investment in said town, and to an earning of ten per cent for said purpose, ten per cent for interest on the investment, and five per cent for depreciation.

Complainant avers that said rates of 55 cents per M for domestic gas and 25 cents per M for industrial gas sold in said town of Coweta, fixed by said Corporation Commission in said order, and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and the said order prescribing said rates operates and will operate to deprive this complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

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## Davenport.

The present fair value of complainant's distributing system in the town of Davenport, less depreciation, is \$12,000.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing plant in the town of Davenport sold 10,294 M cubic feet of gas for domestic use, and none for industrial use.

The leakage in complainant's distributing system in Davenport is in excess of 20% of the gas delivered into same annually, and complainant's rates in Davenport have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage, or of creating a fund either for depreciation or amortization.

In order that complainant might sell 10,294 M cubic feet of gas for domestic use in Davenport during said year, it was necessary, because of the leakage and shrinkage, that said distributing plant acquire at the city gate 12,868 M cubic feet, which, at the city gate rate of 25 cents fixed by said Commission, would have cost \$3,217.00.

Complainant's distributing expenses and taxes in Davenport during said year ending October 31, 1921, were \$1,136.61, making a total expense, including cost of gas, of \$4,353.61.

Complainant's gross receipts for the sale of said gas at the 55 cent

domestic rate fixed by said Corporation Commission would have been \$5,661.70, leaving a net income of \$1,308.09, with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment and correct the leakage in said plant.

Davenport is a small town, and can not support an artificial gas plant when natural gas now available for said town is exhausted, and upon that happening complainant's entire investment  
30 in said town will become worthless except for what it will bring as junk, and complainant is entitled to amortize its entire investment in said town, and it is entitled to an earning of 10% on the value of said property for amortization, and 5% for depreciation, and 10% for interest or dividend on the investment.

Complainant avers that said rates of 55 cents per M for domestic gas and 25 cents per M for industrial gas sold in said town of Davenport, fixed by said Corporation Commission in said order and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive this complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Dawson.

The present fair value of complainant's distributing system in the town of Dawson, including going concern value and working capital, and less depreciation, is \$11,500.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing plant in Dawson sold for domestic use 6,167 M cubic feet of gas, and for industrial purposes it sold none.

The leakage in complainant's distributing system in Dawson is in excess of 20% of the gas delivered into same and complainant's rates in said town have never been such as to enable complainant to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or to create a fund either for the depreciation or amortization of said plant.

In order that said distributing plant might sell 6,167 M cubic feet of gas for domestic use in Dawson, it was necessary because of the leakage and shrinkage that it procure 7,709 M cubic  
40 feet, which, at the city gate rate of 25 cents fixed by said Commission would have cost \$1,927.25.

Complainant's distributing expenses and taxes in Dawson during said year were \$1,794.36, making a total expense, including cost of gas, of \$3,721.61. Complainant's gross receipts from the sale of gas in Dawson at the 42 cent domestic rate prescribed by said Commission would have been \$2,590.14, thus making an actual deficit of \$1,131.47, without taking into consideration interest or dividend upon the investment, depreciation upon the property and a fund for the amortization of said investment, and for the correction of the leakage in said plant.

Dawson is a small town, and can not support an artificial gas plant when the natural gas available for said town is exhausted, and upon that happening, complainant's entire investment in said town will become worthless, and for said reason complainant is entitled to amortize its entire investment in said town, and it is entitled to an earning of 10% upon the value of said property for the amortization thereof, and an additional earning of 5% for depreciation, and 10% for interest or dividend on the investment.

Complainant avers that said rates of 42 cents per M for domestic gas and 25 cents per M for industrial gas sold in said town of Dawson fixed by said Corporation Commission in said order, are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive this complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

### Deer Creek.

The present fair value of complainant's distributing system in the town of Deer Creek, less depreciation, is \$5,535.09.

- 41 During the year from November 1, 1920, to October 31, 1921, complainant sold for domestic use in Deer Creek 8,674 M cubic feet of gas, and for industrial purposes it sold none.

The leakage in complainant's distributing system in Deer Creek is in excess of 20% of the gas delivered into the same annually and complainant's rates in said town have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or of creating a fund either for depreciation, or for amortizing its investment in said plant.

In order that complainant might sell 8,674 M cubic feet of gas in Deer Creek during said year it was necessary, because of the leakage and shrinkage that it procure 10,843 M cubic feet, which, at the city gate rate of 25 cents would have cost \$2,710.75.

Complainant's distributing expenses and taxes in Deer Creek during said year were \$922.46, making a total expense, including the cost of gas, of \$3,633.21. Complainant's gross receipts from the sale of said gas at the 45 cent domestic rate fixed by said Commission would have been \$3,903.30, leaving complainant a net income over and above its actual out of pocket expenses of only \$270.09, with which to pay interest or dividend upon the investment, take care of depreciation upon the property, amortize the said investment and correct the leakage in said plant.

Deer Creek is a small town of only a few hundred inhabitants, and can not support an artificial gas plant when natural gas available for said town is exhausted, and upon that happening complainant's entire investment in said town will become worthless, and for that reason complainant is entitled to amortize its entire investment in said town, and it is entitled to an earning of ten per cent on the value of said property for amortization alone, and an additional earning of five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that said rates of 45 cents per M for domestic gas and 25 cents per M for industrial gas sold in said town of Deer Creek fixed by said Corporation Commission in said order, are grossly inadequate, unremunerative and confiscatory, and the said order prescribing said rates operate and will operate to deprive this complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

### Depew.

The present fair value of complainant's distributing system in the town of Depew, less depreciation, is \$9,779.92.

During the year from November 1, 1920, to October 31, 1921, complainant sold for domestic use in Depew 13,929 M cubic feet of gas, and for industrial use none.

The leakage in complainant's distributing system in Depew is in excess of 20% of the gas delivered into same annually, and complainant's rates in said town have never been such as to enable complainant to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant might sell 13,929 M cubic feet of gas for domestic use in Depew, it was necessary because of the leakage and shrinkage that it procure 17,411 M cubic feet, which, at the city gate rate of 25 cents fixed by said Commission would have cost \$4,352.75.

Complainant's distributing expenses and taxes in Depew during said year were \$1,800.89, making a total expense, including  
43 cost of gas, of \$6,153.64. Complainant's gross receipts from the sale of said gas at the 50 cent domestic rate fixed by said Corporation Commission would have been \$6,964.50, leaving a net income of \$810.86, with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Depew is a small town, and cannot support an artificial gas plant when the natural gas available is exhausted, and upon that happening complainant's entire investment in said town will become worthless, and for that reason complainant is entitled to amortize its entire investment in said town, and it is entitled to an earning of ten per cent on the value of said property for amortization alone, and an additional earning of five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that said rates of 50 cents per M for domestic gas and 25 cents per M for industrial gas sold in said town of Depew fixed by said Corporation Commission in said order, and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

### Edmond.

The present fair value of complainant's distributing system in the town of Edmond, less depreciation, is \$55,000.

During the year from November 1, 1920, to October 31, 1921, complainant sold for domestic use in Edmond 66,115 M cubic feet of gas, and for industrial use 24,348 M cubic feet.

The leakage in complainant's distributing system in Edmond is in excess of 20% of the gas delivered into same, and  
44 complainant's rates in said town have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant might sell 66,115 M cubic feet of gas for domestic use in Edmond, it was necessary because of leakage and shrinkage that it procure 82,644 M cubic feet, at a cost of \$20,661; and in order that it might sell 24,348 M cubic feet of industrial gas it was necessary that it procure 30,435 M cubic feet, at a cost of \$6,087.00, making a total cost for gas purchased at the city gates of \$26,748.00.

Complainant's distributing expenses and taxes in Edmond during said year were \$6,495.06, making a total expense, including the cost of gas, of \$33,243.06.

Complainant's gross receipt from the sale of said gas at the 50 cent domestic rate and 25 cent industrial rate fixed by said Corporation Commission in its said order would have been \$38,144.50, leaving a net income of \$4,901.44, with which to pay interest or dividend upon the investment, take care of depreciation in the plant, amortize the said investment, and correct the leakage in said plant.

Edmond is a small town, and can not support an artificial gas plant when the available natural gas is exhausted, and upon that happening, complainant's entire investment in said town will become worthless except for what it will bring as junk, and for that reason complainant is entitled to amortize its investment in said town, and it is entitled to an earning of 10% on the value of said property for amortization alone, and an additional earning of five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that said rates of 50 cents per M for domestic gas and 25 cents per M for industrial gas sold in said town of Edmond fixed by said Corporation Commission in said order, and

45 the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory and said order prescribing said rates operates and will operate to deprive this complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

## Haskell.

The reproduction value of complainant's distributing system in the town of Haskell at the time said cause was heard by said Commission was \$85,816.70; and the present fair value of said distributing system is \$70,190.37.

During the year from November 1, 1920, to October 31, 1921, complainant sold in the town of Haskell 75,947 M cubic feet of domestic gas, and 22,136 M cubic feet of industrial gas.

The leakage in complainant's distributing system in Haskell is in excess of 20% of the gas delivered into said system annually, and complainant's rates in said town have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant might sell 75,947 M cubic feet of domestic gas in Haskell, it was necessary because of leakage and shrinkage that it procure 94,934 M cubic feet, which, at said city gate rate of 25 cents per M fixed by said Commission, would have cost \$23,733.50. In order that complainant might sell 22,136 M cubic feet of gas in Haskell for industrial purposes, it was necessary because of leakage and shrinkage that it procure 27,670 M cubic feet, which, at the city gate rate of 20 cents per M fixed by said Commission for industrial gas would have cost \$5,534, making a total cost of gas purchased at the city gates of \$29,267.50.

46 Complainant's distributing expenses and taxes in Haskell during said year were \$10,014.87, making a total expense, including the cost of gas, of \$39,282.37.

Complainant's gross receipts from the sale of said gas at the 50 cent domestic and the 25 cent industrial rate fixed by said Corporation Commission would have been \$43,507.50, which would leave complainant a net income of \$4,225.13, with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Haskell is a small town, and can not support an artificial gas plant when the available natural gas is exhausted, and upon the happening of that event complainant's entire investment in said town will become worthless, and complainant is entitled to amortize its entire investment in said town, and is entitled to earn 10% upon the value of its said property for amortization alone, and an additional earning of five per cent for depreciation, and ten per cent for interest or dividend upon the investment.

Complainant avers that said rates of 50 cents per M for domestic gas and 25 cents per M for industrial gas sold in said town of Haskell fixed by said Corporation Commission in said order, and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

### Hunter.

47       The reproduction value of complainant's distributing system in the town of Hunter at the time said cause was heard by said Commission was \$14,767.82, and the present fair value of complainant's said distributing system is \$10,827.64.

During the year from November 1, 1920, to October 31, 1921, complainant sold in the town of Hunter for domestic purposes 12,641 M cubic feet of gas, and for industrial purposes none.

The leakage in complainant's distributing system in Hunter is in excess of 20% of the gas delivered into same, and complainant's rates in said town have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant might sell 12,641 M cubic feet of gas for domestic use in Hunter, it was necessary because of leakage and shrinkage that it procure 15,801 M cubic feet which, at the city rate of 25 cents per M fixed by said Commission, would have cost \$3,950.25.

Complainant's distributing expenses and taxes in Hunter during said year were \$944.57, making a total expense, including the cost of gas, of \$4,894.82.

Complainant's gross receipts from the sale of said gas at the 50 cent domestic rate fixed by said Corporation Commission would have been \$6,320.50, leaving a net income of \$1,425.68, with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Hunter is a small town, and can not support an artificial gas plant, and when the available natural gas is exhausted complainant's entire investment in said town will become worthless, and complainant is entitled to amortize its entire investment in said town, and it is entitled to earn ten per cent on the value of said property for amortization, and an additional earning of five per cent for depreciation, and ten per cent for interest or dividend on the investment.

48       Complainant avers that said rates of 50 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Hunter fixed by said Corporation Commission in said order, and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

### Kellyville.

The fair value of complainant's distributing system in the town of Kellyville at the time said cause was heard and at this time was and is \$8,099.33.

During the year beginning November 1, 1920, and ending October 1, 1921, complainant sold in said town of Kellyville 14,899 M cubic feet of gas for domestic use, and for industrial use it sold none.

The leakage in complainant's distributing system in Kellyville was and is in excess of 20% of the gas delivered into said system, and complainant's rates in said town have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant might sell 14,899 M cubic feet of gas in Kellyville, it was necessary because of leakage and shrinkage that it procure 18,624 M cubic feet, which, at said city gate rate of 25 cents fixed by said Commission, would have cost \$4,656.00.

Complainant's distributing expenses and taxes in said town of Kellyville during the said year ending October 31, 1921, were \$3,483.35, making a total expense, including cost of gas, of 49 \$8,139.35.

Complainant's gross receipts from the sale of said gas at the 50 cent domestic rate fixed by said Corporation Commission would have been \$7,499.00, thus leaving a deficit of \$690.35, and nothing with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Kellyville is a small town of only a few hundred inhabitants, and can not support an artificial gas plant when the available natural gas is exhausted, and upon the happening of that event complainant's entire investment in said town will become worthless, and complainant is entitled to amortize its entire investment in said town, and is entitled to earn ten per cent upon the value of its said property for amortization, and five per cent for depreciation, and ten per cent for interest or dividend upon the investment.

Complainant avers that said rates of 50 cents per M for domestic gas and 25 cents per M for industrial gas sold in said town of Kellyville fixed by said Corporation Commission in said order, and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Lamont.

The reproduction value of complainant's distributing system in the town of Lamont at the time said cause was heard by said Commission, including going concern value and working capital and less depreciation, was \$23,439.27; and the present fair value of 50 complainant's said distributing system in said town, including going concern value and working capital, and less depreciation, is \$16,289.61.

During the year beginning November 1, 1920, and ending October

31, 1921, complainant sold in said town of Lamont 20,131 M cubic feet of domestic gas, and 3,541 M cubic feet of industrial gas.

The leakage in complainant's distributing system in Lamont was and is in excess of 20 per cent of the gas delivered into same, and complainant's rates in said town have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage, or creating a fund either for depreciation or amortization.

In order that the complainant might sell 20,131 M cubic feet of gas for domestic purposes in Lamont, it was necessary because of leakage and shrinkage that it procure 25,164 M cubic feet, which, at the city gate rate of 25 cents per M cubic feet fixed by said Commission, would have cost complainant \$6,291.00. In order that complainant might sell in said town 3,541 M cubic feet of gas for industrial purposes, it was necessary that it procure 4,426 M cubic feet, which, at the city gate rate of 20 cents per M fixed by said Commission for industrial gas, would have cost complainant \$885.20, making a total cost of gas \$7,176.20.

Complainant's distributing expenses and taxes in Lamont during said year were \$1,424.57, making a total expense, including the cost of gas, of \$8,600.77.

Complainant's gross receipts from the sale of gas at the 47 cent domestic rate fixed by said Corporation Commission would have been \$9,461.57, and its gross receipts from the sale of said industrial gas at the 25 cent rate fixed by said Commission would have been \$885.20, making a total gross income of \$10,346.77, and leaving a net income of \$1,746.00, with which to pay interest or dividend upon 51 the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Lamont is a small town, and can not support an artificial gas plant, and when the available natural gas is exhausted, complainant's entire investment in said town will become worthless, and complainant is entitled to amortize its investment in said town, and it is entitled to earn ten per cent on the value of said property for amortization, and five per cent for taking care of depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that said rates of 47 cents per M cubic feet for industrial gas in said town of Lamont fixed by said Corporation Commission in said order are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Luther.

The reproduction value of complainant's distributing system in the town of Luther at the time said cause was heard by said Commission, including going concern value and working capital, and less depreciation, was \$8,759.00; and the present fair value of com-

plainant's said distributing system, including going concern value and working capital, and less depreciation, is \$6,827.30.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant sold in said town of Luther 13,203 M cubic feet of gas for domestic purposes, and for industrial purposes it sold none.

The leakage in complainant's distributing system in Luther is in excess of 20% of the gas delivered into same, and complainant's rates in said town have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant might sell 13,203 M cubic feet of gas in Luther, it was necessary because of leakage and shrinkage that it procure 16,504 M cubic feet, which, at the city gate rate of 25 cents per M cubic feet fixed by said Corporation Commission for domestic gas, would have cost complainant \$4,126.00.

Complainant's expenses and taxes in Luther during said year ending October 31, 1921, were \$1,814.16, making a total expense, including cost of gas, of \$5,940.16.

Complainant's gross receipts from the sale of said gas at the 50 cent domestic rate fixed by said Corporation Commission would have been \$6,601.50, leaving a net income of \$661.34, with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Luther is a small town, and can not support an artificial gas plant, and when the available natural gas is exhausted complainant's entire investment in said town will become worthless, and complainant is entitled to amortize its entire investment in said town, and it is entitled to an earning of ten per cent on the value of said property for amortization, and five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that said rates of 50 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Luther fixed by said Corporation Commission in said order, and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Midlothian.

The reproduction value of complainant's distributing system in the town of Midlothian at the time said cause was heard by said Commission, including going concern value and working capital, and less depreciation, was \$3,269.39; and the present fair value of complainant's said distributing system, including going concern value and working capital, and less depreciation, is \$2,674.32.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant sold in said town of Midlothian 1,424 M cubic feet of gas for domestic purposes, and for industrial purposes it sold none.

The leakage in complainant's distributing system in Midlothian was and is in excess of 20% of the gas delivered into same, and complainant's rates in said town have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant might sell 1,424 M cubic feet of gas in Midlothian, it was necessary because of leakage and shrinkage that it procure 1,780 M cubic feet, which, at the city gate rate of 25 cents per M fixed by said Commission, would have cost \$445.00.

Complainant's distributing expenses and taxes in Midlothian during said year ending October 31, 1921, were \$205.77, making a total expense, including cost of gas, of \$650.77.

54 Complainant's gross receipts from the sale of said gas at the 55 cent domestic rate fixed by said Corporation Commission would have been \$783.20, leaving a net income of \$132.43, with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Midlothian is a small town of a few hundred inhabitants, and can not support an artificial gas plant, so that when the available natural gas is exhausted complainant's entire investment in said town will become worthless; and complainant is entitled to amortize its entire investment in said town, and it is entitled to earn ten per cent on the value of said property for amortization, and five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that the said rates of 55 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Midlothian fixed by said Corporation Commission in said order, and the rates fixed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Meeker.

The reproduction value of complainant's distributing system in the town of Meeker at the time said cause was heard by said Commission including going concern value and working capital, and less depreciation, was \$12,091.00; and the present fair value of complainant's said distributing system, including going concern

55 value and working capital and less depreciation, is \$9,150.00.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant sold in said town of Meeker

14,465 M cubic feet of gas for domestic purposes and 1,674 M cubic feet for industrial purposes.

The leakage in complainant's distributing system in Meeker was and is in excess of 20% of the gas annually delivered into same, and complainant's rates in said town have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant might sell 14,465 M cubic feet of gas for domestic purposes in Meeker, it was necessary because of leakage and shrinkage that complainant procure 18,081 M cubic feet, which, at the 25 cent city gate rate so fixed by said Corporation Commission for domestic gas, would have cost complainant \$4,520.25. In order that complainant might sell 1,674 M cubic feet of gas for industrial purposes, it was necessary that it procure 2,093 M cubic feet, which, at the 20 cent city gate rate so fixed by said Commission for industrial gas, would have cost complainant \$418.60, thus making a total cost for gas purchased at the city gates of \$4,938.85.

Complainant's distributing expenses and taxes in Meeker for the year ending October 31, 1921, were \$1,453.49, making a total expense, including the cost of gas, of \$6,392.34.

Complainant's gross receipts from the sale of said gas at the 45 cent domestic and 25 cent industrial rate fixed by said Corporation Commission would have been \$6,927.45, which would have left a net income for said year of \$535.11, with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Meeker is a small town and cannot support an artificial gas plant, so that when the available natural gas is exhausted complainant's entire investment in said town will become worthless; and complainant is entitled to amortize its entire investment in said town, and it is entitled to earn ten per cent on the value of said property for amortization, and five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that the said rates of 45 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Meeker fixed by said Corporation Commission in said order are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Nardin.

The reproduction value of complainant's distributing system in the town of Nardin at the time said cause was heard by said Commission, including going concern value and working capital, and less depreciation, was \$6,184.56; and the present fair value of complainant's said distributing system, including going concern and working capital, and less depreciation, is \$5,175.69.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant sold in said town of Nardin 7,278 M cubic feet of gas for domestic purposes, and for industrial purposes it sold none.

The leakage in complainant's distributing system in Nardin was and is in excess of 20% of the gas delivered into same, and complainant's rates have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage, or creating a fund either for depreciation or amortization.

In order that complainant might sell 7,278 M cubic feet of gas in Nardin, it was necessary because of leakage and shrinkage that it procure 9,098 M cubic feet, which, at the city gate rate of 25 cents per M fixed by said Commission, would have cost \$2,274.50.

Complainant's distributing expenses and taxes in Nardin during the said year ending October 31, 1921, were \$496.00 making a total expense, including cost of gas, of \$2,771.30.

Complainant's gross receipts from the sale of said gas at the 45 cents domestic rate fixed by said Corporation Commission would have been \$3,275.10, leaving a net income of \$503.80 with which to pay interest or dividend on the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Nardin is a small town and cannot support an artificial gas plant, so that when the available natural gas is exhausted complainant's entire investment in said town will become worthless; and complainant is entitled to amortize its entire investment in said town, and it is entitled to earn 10% on the value of said property for amortization, and five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that the said rate of 45 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Nardin fixed by said Corporation Commission in said order are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

58

Peckham.

The reproduction value of complainant's distributing system in the town of Peckham at the time said cause was heard by said Commission, including going concern value and working capital, and less depreciation, was \$5,664.18; and the present fair value of complainant's said distributing system, including going concern value and working capital, and less depreciation, is \$4,310.65.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's said distributing system sold 5,109 M cubic feet of gas for domestic purposes, and for industrial purposes it sold none.

The leakage in complainant's distributing system in Peckham was and is in excess of 20% of the gas delivered into same, and com-

plainant's rates have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage and creating a fund either for depreciation or amortization.

In order that complainant might sell 5,109 M cubic feet of gas in Peckham, it was necessary because of the leakage and shrinkage that it procure 6,386 M cubic feet, which, at the city gate rate of 25 cents per M fixed by said Corporation Commission, would have cost \$1,596.50.

Complainant's distributing expenses and taxes in Peckham for the year ending October 31, 1921, were \$676.04, making a total expense, including cost of gas, of \$2,272.54.

Complainant's gross receipts from the sale of said gas at the 55 cent domestic rate fixed by said Corporation Commission would have been \$2,809.95, leaving a net income of \$537.41 with which to pay interest or dividend on the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

59 Peckham is a small town, and can not support an artificial gas plant, so that when the available natural gas is exhausted complainant's entire investment in said town will become worthless; and complainant is entitled to amortize its entire investment in said town, and it is entitled to earn ten per cent on the value of said property for amortization, and five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that the said rate of 55 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Peckham fixed by said Corporation Commission in said order, and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

### Pond Creek.

The reproduction value of complainant's distributing system in the town of Pond Creek at the time said cause was heard by said Commission, including going concern and working capital, and less depreciation, was \$29,422.00; and the present fair value of complainant's said distributing system, including going concern value and working capital, and less depreciation, is \$22,130.59.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing system in Pond Creek sold 29,418 M cubic feet of gas for domestic purposes and 3,836 M cubic feet for industrial purposes.

60 The leakage in complainant's distributing system in Pond Creek was and is in excess of 20% of the gas annually delivered into same, and complainant's rates have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant's distributing system in Pond Creek might sell 29,418 M cubic feet of gas for domestic purposes, it was necessary, because of the leakage and shrinkage, that it procure 36,773 M cubic feet, which, at the city gate rate of 25 cents per M fixed by said Corporation Commission, would have cost \$9,193.25. In order that said distributing system might sell 3,836 M cubic feet of gas for industrial purposes, it was necessary because of the leakage and shrinkage that it procure 4,795 M cubic feet, which, at the city gate rate of 20 cents per M cubic feet fixed by said Corporation Commission for industrial gas, would have cost \$959.00, making a total cost of gas to said distributing system of \$10,152.25.

Complainant's distributing expenses and taxes in Pond Creek for the year ending October 31, 1921, were \$3,558.16, making a total expense, including the cost of gas, of \$13,710.41.

Complainant's gross receipts from the sale of said gas at the 49 cent domestic rate and the 25 cent industrial rate fixed by said Corporation Commission would have been \$15,373.82, leaving a net income of \$1,663.41 with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Pond Creek is a small town and cannot support an artificial gas plant, so that when the available supply of natural gas is exhausted complainant's entire investment in said town will become worthless; and complainant is entitled to amortize its entire investment in said town, and it is entitled to earn ten per cent on the value of said property for amortization, and five per cent for depreciation, and  
61 ten per cent for interest or dividend on the investment.

Complainant avers that the said rate of 49 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Pond Creek fixed by said Corporation Commission in said order are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Porter.

The reproduction value of complainant's distributing system in the town of Porter at the time said cause was heard by said Corporation Commission, including going concern value and working capital, and less depreciation, was \$16,818.44; and the present fair value of complainant's said distributing system, including going concern value and working capital, and less depreciation, is \$13,603.09.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing system sold in said town of Porter for domestic use 12,400 M cubic feet of gas, and for industrial use 2,268 M cubic feet.

The leakage in complainant's distributing system in Porter was and is in excess of 20% of the gas delivered into same, and complainant's rates have never been such as to enable it to earn any sum from

the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant's distributing system in Porter might sell 12,400 M cubic feet of gas for domestic purposes, it was necessary because of the leakage and shrinkage that it procure 15,500 M cubic feet, which, at the 25 cent city gate rate fixed by said Corporation Commission, would have cost \$3,875.00. In order that complainant's said distributing system might sell 2,668 M cubic feet of gas for industrial purposes, it was necessary that it procure 2,835 M cubic feet, which, at the 20 cent city gate industrial rate so fixed by said Corporation Commission, would have cost \$567.00, thus making a total cost of gas to said distributing system of \$4,442.00.

Complainant's distributing expenses and taxes in said town for the year ending October 31, 1921, were \$2,296.36, making a total expense, including cost of gas, of \$6,738.36.

Complainant's gross receipts from the sale of said gas at the 55 cent domestic and 25 cent industrial rate fixed by said Corporation Commission, would have been \$7,387.00, leaving a net income of \$648.64 with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Porter is a small town, and can not support an artificial gas plant, so that when the available supply of natural gas is exhausted complainant's entire investment in said town will become worthless; and complainant is entitled to amortize its entire investment in said town, and it is entitled to earn ten per cent on the value of said property for amortization, and five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that the said rate of 55 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Porter fixed by said Corporation Commission in said order, and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

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### Red Fork.

The reproduction value of complainant's distributing system in the town of Red Fork at the time said cause was heard by said Corporation Commission, including going concern value, and working capital, and less depreciation, was \$44,676.96; and the present fair value of complainant's said distributing system including going concern value and working capital, and less depreciation, is \$26,176.26.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's said distributing system sold in said town of Red Fork for domestic use 26,862 M cubic feet of gas, and for industrial use it sold none.

The leakage in Complainant's said distributing system was and is in excess of 20% of the gas annually delivered into same, and complainant's rates in said town have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage, or creating a fund either for depreciation or amortization.

In order that complainant's distributing system in Red Fork might sell 26,862 M cubic feet of gas for domestic purposes, it was necessary, because of the leakage and shrinkage, that it procure 33,578 M cubic feet, which, at the 25 cent city gate rate so fixed by said Corporation Commission, would have cost \$8,394.50.

Complainant's distributing expenses and taxes in said town for the year ending October 31, 1921, were \$1,567.67, thus making a total expense, including cost of gas, of \$9,962.17.

Complainant's gross receipts from the sale of said gas at the 42 cent domestic rate fixed by said Corporation Commission would have been \$11,282.04, leaving a net income of \$1,319.87, with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Red Fork is a small town, and cannot support an artificial gas plant, so that when the supply of natural gas available for said town is exhausted, complainant's entire investment therein will become worthless, and complainant is entitled to earn ten per cent on the value of said property for amortization, and five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that the said rate of 42 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Red Fork fixed by said Corporation Commission in said order are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Shamrock.

The reproduction value of complainant's distributing system in the town of Shamrock at the time said cause was heard by said Corporation Commission, including going concern value and working capital, and less depreciation, was \$28,745.88; and the present fair value of complainant's said distributing system, including going concern value and working capital, and less depreciation, is \$21,919.75.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing system sold in said town of Shamrock for domestic use 50,263 M cubic feet of gas, and for industrial use it sold none.

The leakage in complainant's distributing system in Shamrock was and is in excess of 20% of the gas annually delivered into same, and complainant's rates have never been such as

to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant's distributing system in Shamrock might sell 50,265 M cubic feet of gas for domestic purposes, it was necessary, because of the leakage and shrinkage, that it procure 62,829 M cubic feet, which, at the 25 cent city gate rate so fixed by said Corporation Commission would have cost \$15,707.25.

Complainant's distributing expenses and taxes in said town for the year ending October 31, 1921, were \$6,095.72, thus making a total expense, including cost of gas, of \$21,802.97.

Complainant's gross receipts from the sale of said gas at the 45 cent domestic rate fixed by said Corporation Commission, would have been \$22,618.35, thus leaving a net income of \$815.38, with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Shamrock is a small town and cannot support an artificial gas plant, so that when the supply of natural gas available for said town is exhausted complainant's entire investment in said town will become worthless; and complainant is entitled to amortize its entire investment in said town, and it is entitled to earn 10% on the value of said property for amortization, and five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that said rate of 45 cents per M for domestic and 25 cents per M for industrial gas in said town of Shamrock fixed by said Corporation Commission in said order are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Stroud.

The reproduction value of complainant's distributing system in the town of Stroud at the time said cause was heard by said Corporation Commission, including going concern value and working capital, and less depreciation, was \$46,161.01; and the present fair value of complainant's said distributing system, including going concern value and working capital, and less depreciation, is \$34,852.61.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing system sold in said town of Stroud for domestic use 33,433 M cubic feet of gas, and for industrial use 12,851 M cubic feet.

The leakage in complainant's distributing system in Stroud was and is in excess of 20% of the gas annually delivered into same and complainant's rates have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant's distributing system in Stroud might sell 33,433 M cubic feet of gas for domestic purposes, it was necessary, because of the leakage and shrinkage, that it procure 41,791 M cubic feet, which, at the 25 cent city gate rate so fixed by said Corporation Commission for domestic gas would have cost \$10,197.77. In order that complainant's said distributing system might sell 12,851 M cubic feet of gas for industrial purposes it was necessary that it procure 16,064 M cubic feet, which, at the 20 cent industrial city gate rate so fixed by said Corporation Commission would have cost \$3,212.80, thus making a total cost of gas to said distributing system of \$13,410.55.

Complainant's distributing expenses and taxes in said town for the year ending October 31, 1921, were \$5,935.91 thus making a total expense, including cost of gas, of \$19,346.46.

Complainant's gross receipts from the sale of said gas at the 55 cent domestic and the 25 cent industrial rate fixed by said Corporation Commission would have been \$21,600.95, leaving a net income of \$2,254.44, with which to pay interest or dividend upon the investment, take care of depreciation, amortize said investment, and correct the leakage in said plant.

Stroud is a small town, and can not support an artificial gas plant, so that when the supply of natural gas available for said town is exhausted, complainant's entire investment in said town will become worthless; and complainant is entitled to amortize its entire investment in said town, and it is entitled to earn ten per cent on the value of said property for amortization and five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that said rate of 55 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Stroud fixed by said Corporation Commission in said order, and the rates prescribed in said supplemental order of July 15, 1921, are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Turley.

68 The reproduction value of complainant's distributing system in the Town of Turley at the time said cause was heard by said Corporation Commission, including going concern value and working capital, and less depreciation, was \$2,763.03; and the present fair value of complainant's said distributing system, including going concern value and working capital, and less depreciation, is \$1,965.70.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing system sold in said Town of Turley for domestic use 4,847 M cubic feet of gas, and for industrial use it sold none.

The leakage in complainant's distributing system in Turley was

and is in excess of 20% of the gas annually delivered into same, and complainant's rates have never been such as to enable it to earn any sum from the sale of gas in said system for the purpose of correcting said leakage or creating a fund either for depreciation or amortization.

In order that complainant's distributing system in Turley might sell 4,847 M cubic feet for domestic purposes, it was necessary, because of the leakage and shrinkage, that it procure 6,059 M cubic feet, which, at the 25 cent city gate rate so fixed by said Corporation Commission, would have cost \$1,514.75.

Complainant's distributing expenses and taxes in said town for the year ending October 31, 1921, were \$1,148.12, making a total expense, including the cost of gas, of \$2,662.87.

Complainant's gross receipts from the sale of said gas at said 42 cent rate fixed by said Corporation Commission would have been \$2,035.14, thus making an actual deficit of \$627.13, and with nothing with which to pay interest or dividend on the investment, take care of depreciation, amortize said investment, and correct the leakage in said plant.

Turley is a small town, and can not support an artificial gas plant, so that when the supply of natural gas available for said town is exhausted, complainant's entire investment in said town will become worthless, and complainant is entitled to earn ten per cent on the value of said property for amortization, and five per cent for depreciation, and ten per cent for dividend or interest on the investment.

Complainant avers that said rate of 42 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Turley fixed by said Corporation Commission in said order are grossly inadequate, unremunerative and confiscatory, and said order prescribing said rates operates and will operate to deprive complainant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Wellston.

The reproduction value of complainant's distributing system in the town of Wellston at the time said cause was heard by said Corporation Commission, including going concern value and working capital, and less depreciation, was \$17,579.46; and the present fair value of complainant's said distributing system, including going concern value and working capital, and less depreciation, is \$12,888.16.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing system sold in said town of Wellston for domestic use 19,034 M cubic feet of gas, and for industrial use 2,494 M cubic feet.

The leakage in complainant's distributing system in Wellston was and is in excess of 20% of the gas annually delivered into same, and complainant's rates for gas in said town have never been such as to enable it to earn any sum from the sale of gas in said system for the

purpose of correcting said leakage or creating a fund either for depreciation or amortization.

70 In order that complainant's distributing system in Wellston might sell 19,034 M cubic feet of gas for domestic purposes, it was necessary, because of the leakage and shrinkage, that it buy 23,795 M cubic feet, which, at the 25 cent city gate rate so fixed by said Corporation Commission, would have cost \$5,948.25. In order that complainant's said distributing system might sell 2,494 M cubic feet of gas for industrial purposes, it was necessary that it procure 3,118 M cubic feet, which, at the 20 cent city gate industrial rate as fixed by said Corporation Commission, would have cost \$623.75, thus making a total cost of gas to said distributing system of \$6,572.00.

Complainant's distributing expenses and taxes in said town for the year ending October 31, 1921, were \$3,753.45, making a total expense, including cost of gas, of \$10,325.45.

Complainant's gross receipts for the sale of said gas at the 52 cent domestic and the 25 cent industrial rate fixed by said Corporation Commission, would have been \$10,521.43, leaving a net income of \$195.98, with which to pay interest or dividend upon the investment, take care of depreciation, amortize the said investment, and correct the leakage in said plant.

Wellston is a small town, and can not support an artificial gas plant, so that when the supply of natural gas available for said town is exhausted, complainant's entire investment in said town will become worthless, and complainant is entitled to amortize its entire investment in said town, and it is entitled to earn ten per cent on the value of said property for amortization, five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that the said rate of 52 cents per M for domestic gas and 25 cents per M for industrial gas in said town of Wellston fixed by said Corporation Commission in said order are grossly inadequate unremunerative and confiscatory, and said order  
71 prescribing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Claremore Production, Transmission, and Distributing System.

Complainant's production and transmission property in what is known as its Claremore system serve no town or city except the City of Claremore, in which city complainant also has a distributing system, so that said entire production, transmission and distributing property is used and useful in serving the City of Claremore, and in serving no other town or city.

The reproduction value of complainant's said production, transmission and distributing system serving the City of Claremore, at the time of the institution of said action, including going concern value, and less depreciation, but excluding working capital, was

\$843,088.87; and the present fair value of complainant's said distributing system, including going concern value, and less depreciation, but excluding working capital, is \$572,992.12.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant's distributing system sold in said City of Claremore for domestic use 128,816 M cubic feet of natural gas, and for industrial use 3,946 M cubic feet of gas, all of which said gas complainant produced and delivered into said distributing system with its said production and transmission property.

Said gas was sold at the following rates fixed by said Corporation Commission, to-wit:

First 100,000 cu. ft. per month 40¢ per M net,  
 Next 400,000 cu. ft. per month 32¢ per M net.  
 All over 500,000 cu. ft. per month 25¢ per M net.

From the sale of said gas complainant derived a gross income of \$53,933.06.

72 Complainant's production and transmission expenses and taxes for said year amount to \$36,301.64, and its distributing expenses and taxes for said year amounted to \$20,469.26, making a total expense of \$56,770.90, and leaving complainant an actual deficit of \$2,837.84, and with nothing with which to pay interest or dividend on the investment, and with which to take care of depreciation and amortization, and to correct the leakage in said plant.

Claremore is a city of seven or eight thousand inhabitants, and can not support an artificial gas plant, so when the supply of natural gas available for said city is exhausted, complainant's entire investment used and useful in serving said city will become worthless, and complainant is entitled to amortize the same, and it is entitled to earn ten per cent on the value of said property for amortization, five per cent for depreciation and ten per cent for interest or dividend on the investment.

Complainant avers that the said rates above named prescribed for gas in said city of Claremore by said Corporation Commission are grossly inadequate, unremunerative and confiscatory, and the action of said Corporation Commission in enforcing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

#### Inola Production, Transmission, and Distributing System.

Complainant's production and transmission property in what is known as its Inola system serves no town or city except the town of Inola, in which town complainant also has a distributing system, so that said entire production, transmission and distributing property is used and useful in serving the town of Inola and in serving no other town or city.

73 The reproduction value of said production, transmission and distributing system serving the town of Inola, at the time of the institution of said action, including going concern value and

less depreciation, but excluding working capital, was \$28,951.99; and the present fair value of complainant's said distributing system, including going concern value and less depreciation, but excluding working capital, is \$24,263.12.

During the year beginning November 1, 1920, and ending October 31, 1921, complainant sold in said town of Inola for domestic use 9,245 M cubic feet of natural gas, all of which said gas complainant delivered into said distributing system with its said production and transmission property; and for industrial purposes it sold none.

Said gas, at the following rates now existing fixed by said Corporation Commission for Inola, to-wit:

First 100,000 cu. ft. per month 40¢ per M net.

Next 400,000 cu. ft. per month 32¢ per M net.

All over 500,000 cu. ft. per month 25¢ per M net.

would have given complainant a gross income of \$3,698.00.

Complainant's production and transmission expenses and taxes for said year amounted to \$3,561.80, and its distributing expenses and taxes for said year amounted to \$2,182.28, making a total expense in furnishing said gas of \$5,744.08, and leaving complainant an actual deficit of \$2,046.08, and with nothing with which to pay interest or dividend on the investment, and with which to take care of depreciation and amortization and correct the leakage in said plant.

Inola is a small town and can not support an artificial gas plant, so that when the supply of natural gas available for said town is exhausted, complainant's entire investment used and useful in serving the said town will become worthless; and complainant is entitled to amortize the same, and it is entitled to earn ten per cent on the value of said property for amortization, five per cent for depreciation, and ten per cent for interest or dividend on the investment.

Complainant avers that the rates above named prescribed for gas in said town of Inola by said Corporation Commission are grossly inadequate, unremunerative and confiscatory, and the action of said Corporation Commission in enforcing said rates operates and will operate to deprive complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Complainant further shows that it has applied to the Supreme Court of Oklahoma for a supersedeas, suspending the enforcement of said orders so made by said Corporation Commission, and for authority to put into effect reasonable and proper rates, both at the town border or city gate for complainant's production and transmission property, and distribution rates in complainant's several distribution systems; and said Supreme Court of Oklahoma has refused to grant said supersedeas.

Complainant has no adequate remedy at law; and unless this court will grant an injunction enjoining said Corporation Commission, and the members thereof, from enforcing said rates, and enjoining

the other defendants from instituting and carrying on proceedings for the enforcement of said rates, complainant will be deprived of its said properties without due process of law and in violation of the Constitution of the United States, and will suffer other great and irreparable damage and injury.

Wherefore, the premises considered, complainant prays as follows:

First, that this court will issue a temporary injunction, enjoining the defendants in this case and each of them, and all other persons acting by, through or under them, from in any wise enforcing each, all and every one of the rates for gas furnished by complainant now in effect and hereinbefore complained of, and from interfering with complainant in its right to establish other higher and different rates for gas supplied at the town borders or city gates of said towns and cities, and in its said distributing systems, and enjoining the said Corporation Commission and the members thereof from entertaining complaints against complainant on said account, and enjoining the other defendants from making complaints against complainant, either before said Corporation Commission or before any other tribunal, on account of its installing other higher and different rates, and enjoining all of the defendants from taking any proceeding before any tribunal in the State of Oklahoma seeking in any wise to enforce said rates or interfere with complainant in its right to install other higher and different rates, and the complainant offers to submit to such conditions as may be equitable and just upon the granting of said temporary injunction.

Second, that this court retain jurisdiction of this bill, and that upon the determination of complainant's said appeal in said Supreme Court, if the said rates so fixed by said Supreme Court upon appeal are inadequate, unreasonable and confiscatory, then that complainant have leave to file a supplemental bill in this court for relief against said rates so fixed; and that upon final hearing said temporary injunction so issued be made permanent and perpetual.

Third, complainant prays for all such other and further relief to which in law or in equity it may be entitled.

D. A. RICHARDSON,  
*Attorney for Complainant.*

C. B. AMES,  
T. G. CHAMBERS,  
R. G. LOWE,  
B. A. AMES,  
*Of Counsel.*

76 STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

R. C. Sharp, being first duly sworn, on his oath deposes and says: My name is R. C. Sharp. I am, and for some years have been, Vice-president of the complainant Oklahoma Natural Gas Company, and active in the management of its affairs. Complainant is a

corporation organized under the laws of Oklahoma, and I have full power and authority to verify the above and foregoing bill of complaint in its behalf.

I have read the above and foregoing bill of complaint and am familiar with the averments therein contained. The facts stated in said bill are true, with the following exception: In said bill it is alleged that on July 15, 1921, said Commission made retroactive supplemental orders effective as of July 1, 1921, prescribing the following rates in the towns of Depew, Edmond, Haskell, Hunter, Kellyville, Luther, Arcadia, Chandler, Coweta, Davenport, Midlothian, Peckham, Stroud and Porter, to-wit:

50¢ per M for the first 100,000 cu. ft. per month  
40¢ per M for the next 400,000 cu. ft. per month  
25¢ per M for all over 500,000 cu. ft. per month.

The facts are that on said date said Commission made said order as to the towns of Depew, Edmond, Haskell, Hunter, Kellyville and Luther; but as to the other towns mentioned, to-wit, Arcadia, Chandler, Coweta, Davenport, Midlothian, Peckham, Stroud and Porter, said Commissions retroactive supplemental order prescribed the following rates:

55¢ per M for the first 100,000 M cu. ft. per month  
40¢ per M for the next 400,000 M cu. ft. per month  
25¢ per M for all over 500,000 M cu. ft. per month.

In the preparation of said bill the foregoing orders were confused, and I make the correction in this verification to avoid rewriting the bill.

R. C. SHARP.

Subscribed and sworn to before me this 17th day of December, 1921.

[SEAL.]

EMMA SEBERGER,  
Notary Public.

My commission expires Jan. 12, 1925.

77      Endorsed: Filed in District Court on December 12th, 1921.  
Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

78 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Eq.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and S. P. Free-ling, Attorney General of Oklahoma, and The City of Tulsa, a Municipal Corporation, and Frank E. Duncan, Its City Attorney, and The City of Sapulpa, a Municipal Corporation, and Le Roy J. Burt, Its City Attorney, and The City of Claremore, a Municipal Corporation, and P. W. Holtzendorff, Its City Attorney.

*Answer.*

Come now the defendants above named, saving and excepting the City of Claremore and P. W. Holtzendorff, its City Attorney, and for their answer to the bill of complaint herein and in response to the citation for them to show cause why such temporary injunction should not be granted as prayed for in complainant's bill, say:

The defendants challenge the sufficiency of the bill of complaint by reason of the insufficiency of facts alleged therein to constitute a valid cause of action in equity in that the bill of complaint on its face discloses that the complainant has an adequate remedy at law by appeal from the order of the Corporation Commission by it complained of to the Supreme Court of the State of Oklahoma, and that complainant is pursuing such remedy at law; and in the premises the complainant is not entitled to the relief prayed until it shall have exhausted the said remedy at law which it is, as it alleges, pursuing, and the defendants ask that the point of law here raised, which goes to the whole of the cause of action stated in the bill, may be disposed of before the consideration of the  
79 application of the complainant for a temporary injunction as prayed for.

The defendants admit the several allegations in the bill of complaint respecting the corporate and official characters of the plaintiff and the respective defendants. For the purpose of this action they admit the allegations in respect to the divisions of complainant's property into five separate divisions, and the allegations in that connection with respect to the furnishing of gas to the several cities and companies named. They admit that the complainant's business in some respects is that of a public service corporation as defined by the Constitution and laws of the State of Oklahoma, and that in some of its capacities it is a public utility and in respect of its gathering lines, transmission lines and system, pressure stations, regulator stations, rights of way, distributing lines and system it is a public

utility, but as respects its ownership and use of gas leases and gas wells it is a private corporation and not a public utility within the contemplation of the Constitution and laws of Oklahoma, and particularly Chapter 93 of the Session Laws of Oklahoma, 1913. They deny that the present fair value of complainant's property used and useful in its said public service is the sum of \$20,000,000.00 and allege that if the complainant owns properties the value of which is the sum of \$20,000,000.00, which they deny, that said valuation embraces items of property to which the complainant attributes a value of many millions of dollars which is owned and used by it in its private capacity and in connection with its purely private business and which is not entitled to be considered as property upon which rates to be charged the public for its public utility service may be based or predicated. The defendants admit that from September 1, 1919 to April 1, 1920, the rates for gas in each independent and distributing company referred to in the bill of complaint were as therein alleged, and admit that such schedule of rates purported to be based upon a purchase price of 6¢ per thousand cubic feet in the field for the gas which complainant served to the

80 public whether purchased by complainant from others or by complainant produced. They admit that until July 1, 1921, the price which complainant received for gas which it furnished to the independent distributing companies named in the bill of complaint to be by them sold and distributed in the towns and cities which they served was two-thirds of the collections made by the distributing companies from gas sold for domestic purposes and three-fourths of the collections so made by them for gas sold for industrial purposes; and in this connection defendants say that the divisions aforesaid of collections made by independent distributing companies and the furnishing of gas by complainant for distribution by such independent distributing companies were made and furnished by complainant pursuant to agreements and arrangements voluntarily made and entered into by and between the complainant and the respective independent distributing companies (which agreements and arrangements will for brevity and convenience be herein referred to as "Divisional Contracts"). Such divisional contracts were never required to be made by the Corporation Commission of Oklahoma and any inadequacy of return, if any existed, which the defendants deny, to the complainant consequent upon the carrying out of such divisional contracts is solely attributable, until July 1, 1921, to the voluntary actions of the complainant, its officers and directors, and is in no wise entitled to any consideration or weight in this suit. On said July 1, 1921, upon the application of complainant to the Corporation Commission of Oklahoma, and as rapidly as the question could be determined after it was for the first time formally raised by the complainant, the said divisional contracts were by Order No. 1886 of the Commission, referred to in the bill of complaint, abrogated as prayed for by the complainant and there was substituted by such Order the City Gate or Border plan of payments by such independent local distributing companies to the

complainant for gas furnished by complainant to said independent distributing companies. (For convenience and brevity this substituted method of compensation is hereinafter referred to as "City Gate Rate.")

By reason of the method of compensation to complainant under the said divisional contracts, so voluntarily made and conformed to, the complainant voluntarily sustained a loss from unac-  
81 counted for gas, consequent upon the defective construction and maintenance of the distributing systems of the independent distributing companies aforesaid, which loss was grossly in excess of that which would or should have been sustained if such local distributing systems had been properly constructed and kept in an adequate state of repair with a view to the prevention of leakage. Moreover, in the complainant's own local distributing system, likewise by reason of improper and inadequate construction and by reason of not having been kept in a reasonably tight state of repair, all due to the fault of the complainant, grossly excessive leakage of gas occurred. Furthermore, the defendants are informed and believe, and hence allege the fact so to be, that the loss of gas by leakage in the transmission and general distributing systems of the complainant is not less than 20% of the gas by it transported and delivered to the several local distributing systems, whereas the maximum amount of loss by leakage which good practice and a reasonably and properly constructed and maintained system, such as that of the complainant here immediately referred to would sustain, would not exceed five per centum of the gas transported in such system.

Plaintiff, in the premises, was not entitled to be compensated by the consuming public for gas lost by such grossly excessive leakage, whether occurring in its own local distributing system or in the local distributing system of the several independent local distributing companies referred to, and in the general transmission and distributing systems of the complainant. Such grossly excessive leakage was not less than 15 per centum of the total volume of gas supplied through the transmission lines and systems of the complainant and in addition was not less than 10 per centum of all of the gas which flowed into the distributing systems of such independent local distributing companies and of the complainant. With the exercise of reasonable diligence and reasonable expenditures of money, and by prudential expenditures for repairs, it would have been possible in a practical way to have so repaired the transmission system and the local distributing systems, aforesaid, so as to have preserved and saved from loss the percentages above named as having been negligently lost.

82 And, if, which defendants deny, the rates fixed by said Order No. 1886 of the Corporation Commission, complained of in the bill of complaint, yielded inadequate returns to the complainant the fault and responsibility for such inadequacy rests upon the complainant and not upon said order and the rates therein prescribed. The rates prescribed in said order would, if such systems were in reasonable and proper state of tightness and repair, and but

for such excess leakage, be more than adequate to yield a proper return upon any reasonable value which complainant could contend its properties, including its privately owned production properties, have, as well as produce an adequate reserve for depreciation and as well an adequate amortization fund. The defendants admit that in March 1920, and as a temporary expedient to meet the emergency alleged in the bill of complaint, a temporary increase was, as set out in the bill, made in the rate for gas, but say that said rates and the method of dealing with the divisional contracts were but temporary expedients resorted to in the emergency presented by complainant's then condition as disclosed to the Corporation Commission. And, in this connection the defendants say that the Corporation Commission of Oklahoma has never failed promptly and with all due expedition to consider any emergency or situation in which the complainant found itself and for which it in any proper manner sought relief from said Commission, and the Corporation Commission of Oklahoma here vows its willingness and readiness to enter in and properly consider and act upon any proposition, question or condition, whether of permanent or temporary and emergency character, within the jurisdiction of the said Commission as respects which the complainant may deem itself entitled to relief at the hands of the Commission, and avows its readiness to grant to the complainant any relief which in any of such circumstances complainant may show itself to be entitled to.

The defendants admit that the complainant caused its properties to be inventoried and that the Commission in connection with the inventory and appraisement by the complainant's engineer appointed one Durham to likewise inventory and appraise the properties of the complainant, and that on August 5, 1920 the complainant filed with the Corporation Commission an application for a general increase in all its rates upon all its systems, and that it among other relief prayed the Commission to fix a flat price or gate rate at the town borders as alleged. They admit that said application came on for hearing and admit that the allegations of the bill as respects the exclusion of the City of Claremore and the inclusion of the City of Enid in said hearing, as to the Claremore and Inola systems the defendants state that the complainant has never requested that such matter be heard separately by the Commission until within the past few days, and that since asking that the hearing be had with respect to such systems the defendant Corporation Commission is taking requisite steps to the proper disposition of the matter of valuation and rates as respects the Claremore and Inola properties of the complainant.

They admit the making of the order of December 20th as alleged in the bill, though not the circumstances surrounding said Order as therein alleged, and admit that the Supreme Court of Oklahoma by proceedings in prohibition, judicial in nature and within the jurisdiction of said Supreme Court of Oklahoma, effectively prevented the taking effect of said order. To prevent repetition, the circumstances surrounding the making of said Order are alleged to have been as explained in that portion of Order No. 1886 hereto attached as Exhibit "A."

Defendants admit that the application referred to in the bill was not finally determined until June 25, 1921, but say that said application was determined with all practicable expedition and dispatch; that the record and evidence was very voluminous and that the said cause was finally disposed of without unnecessary delay, and they admit the lapsing of the order effective April 1, 1921, and the reversion of complainant's rates to those theretofore in effect as alleged, but say that the same reverted into effect by virtue of the terms of the orders themselves and that the complainant, though it well

84 knew the terms of such order, instituted no proper proceedings before the Commission to prevent such reversion. Defendants deny that the complainant was required on October 1, 1920 to increase the price which it paid for all its gas which it purchased everywhere in the State of Oklahoma to 10¢ per thousand cubic feet if the allegations respecting such matter are intended to imply that the Corporation Commission made an order imposing any such requirement upon the complainant. If in any sense the defendant was required to make such payment, the requirement was due to competitive conditions and not due to any order of the Corporation Commission of Oklahoma. Moreover, much of the gas distributed by the complainant is produced from its privately owned leases and gas wells, and the defendants are not advised as to whether in the required separate accounting as between its privately owned and its public utility property the complainant has set up compensation to itself for the increased price for gas distributed to the public and acquired from its privately owned properties aforesaid at the increased 10¢ price.

The defendants admit that on June 25, 1921, the Corporation Commission of Oklahoma made and promulgated its final order No. 1886, and that a portion of said order is as copied in the bill of complaint. Attached hereto is a copy of said Order No. 1886 in its entirety, the same being made a part hereof as fully as if set out at length herein and being marked for identification Exhibit "A."

They admit that in said order the Corporation Commission found that it was to the public interest that the city gate rate principle be established and so ordered, and after a discussion of the various data submitted to the Commission, and after examining the evidence adduced, the Commission stated as follows:

"For the present purposes, therefore, the Commission will take as the value of the production and transmission system of the Oklahoma Natural Gas Company, including the general system and the Enid system, but excluding Claremore, Ramona and Inola, the sum of \$14,528,879.86."

From the data and evidence submitted to the Commission, the Commission did not find itself able in said proceeding to finally pass upon and dispose of the matter of separating the production and transmission systems, that is to say, the purely privately owned property of complainant as distinguished from its property  
85 used and useful in serving the public. Wherefore, for the purposes of making a rate at that time and affording to the complainant such relief as in the then circumstances

was able to be afforded to the complainant, the Commission predicated its order upon the value aforesaid, which included the production or private property of the complainant as well as that which alone properly furnished a predicate for a rate basis. But the Commission did not find or conclude that all of such property was used and useful in the public service business of the complainant. Notwithstanding which, the circumstances disclosed by the said Order, it made the rate therein fixed which, based upon the data and experience then available for consideration by the Commission and being predicated upon the usual conception that such experience could be relied upon to repeat itself during future periods during which such rate would be effective, was sufficient to produce to the complainant an adequate return for amortization, depreciation and net earnings, based upon the city gate rate principle. Defendants admit the making, but with the consent of the complainant, of the supplemental order on July 15, 1921 as alleged. Defendants deny that the rates fixed by said order, either the gate rate or the distributing rate, or both, are inadequate, unremunerative, or confiscatory, and therefore deny that they operate or will operate to deprive the complainant of its property without due process of law. They admit that the complainant has appealed from said order to the Supreme Court of Oklahoma where said appeal is pending and as yet undetermined, but call attention to the fact that whereas it was competent under the provisions of the Constitution and laws of Oklahoma for the complainant to have appealed from said order promptly upon its having been made, that the complainant delayed until the — day of December, 1921, and until nearly the time of expiration of the right to appeal therefrom under said laws, to file its petition in error in the Supreme Court of the State of Oklahoma. By the terms of the Constitution of the State of Oklahoma and the laws enacted thereunder, it is required that appeals in such cases "Shall have precedent upon the docket of the Supreme Court, shall be heard and disposed of promptly by the court irrespective of its place of session, next after the habeas corpus and  
86 state cases already on the docket of the court;" and in the said cases the appeal will be speedily determined, and the defendants avow their willingness to co-operate with complainant in all proper matters in procuring the earliest possible consideration and disposal of said appeal by the Supreme Court of Oklahoma.

Moreover, it is provided in Section 23 of Article 9 of the Constitution of Oklahoma:

"The right of the Commission to prescribe and enforce rate charges, calculations, rules and regulations affecting any and all actions of the Commission theretofore entered by it and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal."

In connection with said provision the defendants assert that in making said order the Corporation Commission based its calcula-

tions upon the demand for gas as experienced in preceding years, and if the experience since the making of such order, as alleged in the bill of complaint, has disclosed that complainant has not been able to sell and dispose of as much gas as theretofore and if by reason of the diminished demand for gas the rates prescribed by said order are inadequate, the complainant had by virtue of the constitution aforesaid an adequate remedy by applying to the Corporation Commission for an increased based upon the failure of the experience subsequent to the order to measure up to the experience upon which the order was predicated, which said remedy, however, the complainant has not availed itself of and by reason of its failure to so avail itself of that remedy it is not entitled to the relief prayed for in its bill of complaint. The defendant Corporation Commission in this connection avows its readiness to consider any application which the complainant may make to it for relief by reason of any different conditions and circumstances.

The defendants deny all of the allegations in the bill of complaint respecting the so-called "reproduction value" of complainant's production and transmission property, the allegations  
87 respecting depreciation and respecting additions to the system made in connection therewith, and say that the complainant is not entitled to have its properties valued for rate making purposes at the amount of the cost to reproduce property or at the amount of the cost to reproduce property less depreciation; averring that while the cost to reproduce a public utility property is a matter proper to be considered in arriving at the present fair value of a public utility, it is not the controlling or sole consideration. Further, the production property included in the alleged "reproduction value" of complainant's property is not proper to be considered in ascertaining a rate basis. Further, as hereinafter more particularly set out, and allowing all due consideration to reproduction costs, large elements of the complainant's property have become useless for its public service purposes, in that, as alleged by the complainant, many of the gas fields from which complainant obtained its gas and to which it built its lines have been exhausted and such exhaustion has rendered obsolescent, and not used or useful in the public service business of the complainant, properties included in the inventories and appraisalment upon which the reproduction cost was calculated, and the figures and allegations of the bill of complaint respecting this subject are wholly unreliable and fail to measure up to that degree of distinctness and certainty required to be disclosed by a complainant seeking the intervention of the courts of the United States as against the rates, regulations and orders of state bodies such as the defendant Corporation Commission.

The defendants deny that the original cost of the complainant's production and transmission system, including additions to January 1, 1921, was \$15,216,907.64, and state that the amount of such costs as shown by said Exhibit "A" represent the true amount thereof; and, as hereinbefore alleged, the defendants aver the total cost of the complainant's public utility property used and useful in its business at the present time do not exceed the sum of \$8,000,000.00, and that

88 included in the amount found by the order to have been the cost of complainant's properties are many millions of dollars paid, under the circumstances hereinafter outlined, for large acreages of leases in wildcat and undeveloped territory and in speculative and venturesome drilling operations upon wildcat leases in wildcat territory which, even if it be conceded that the production element and portion of the complainant's business and properties could be considered as belonging, apportionable or allocable to its public utility property, was, nevertheless of such highly speculative character and value and so unproductive of results as to disentitle it to consideration in a proper determination of the historical cost of complainant's property. The defendants are informed, the source of their information being the sworn testimony of a director, and the active vice-president of the complainant, and hence allege the facts to be, that large portions of the production properties of the complainant, including leases and pipe lines, were purchased from other corporations which were owned in large part and controlled by the officers consummating such purchases on behalf of the complainant (the purchase price thereof being paid for by the issuance of stock of the complainant at a par value equal to the price agreed to be paid therefor by the parties between themselves, and the price at which such properties were included in the historical cost inventories made and referred to in Order No. 1886 did not represent the cost of the properties to the vendor corporations but represented the par value of the stock issued to such vendor corporations of their designees in payment therefor). The amount in par value of stock paid for the properties purchased from these commonly controlled corporations was approximately \$4,642,000. Moreover, at the time of the organization of the Oklahoma Natural Gas Company no cash whatever was paid into the company for the issuance of its then \$4,000,000.00 capital stock, but such stock was issued in its entirety for properties which properties were in large part bought from the promoters who subsequently became officers of the complainant corporation at prices fixed by themselves to be paid to themselves therefor in stock of the complainant. The property so acquired

89 consisted of about ten thousand acres of leases in a territory which was described as a virgin field with no pipe line situated in the Hog-shooter district very largely, and which properties, according to the allegations of the bill of complaint, are exhausted and as against which, as shown by the allegations of the bill and as indicated by tables, all as shown in the order attached to Exhibit "A," only \$508,751.79 has been charged as for removals. Except for money received from the indebtedness of the complainant, it has built up its entire properties out of earnings and the issue of its stock above referred to, and in connection with this fact the defendants aver that upon the valuation, which under the circumstances above shown, was assumed for the purposes of making said order No. 1886, and especially and for the better reason, if the complainant's allegation as to the value of its properties at this time or at any other time named in its bill of complaint could possibly be true, it is disclosed, and defendants allege the fact to be, that the complainant's earnings

have been sufficient to provide not only an adequate return upon the amount of its investment but to provide at all times a sufficient reserve for depreciation and a sufficient fund for amortization, and that any of such figures as to values should be reduced by the amount of the reserve and amortization fund thus shown to have been earned. And, in the premises, the complainant is not entitled to earnings upon a valuation in excess of eight million dollars.

Further, the defendants deny the allegations in the bill of complaint to the effect that the complainant has not under the rates heretofore in force been able to set aside and provide a reserve for depreciation and make provision for the amortization of its property, and say that if it has not been able to do so the failure so to do is its own fault for that the rates charged by the complainant at all times since the organization of the complainant's corporation in 1907 or 1908 until April 19, 1918 were rates of its own fixing and by it voluntarily put in force, and it was not until April 19, 1918 that complainant availed itself of the privilege accorded to it by the Constitution and laws of the State of Oklahoma to have its rates fixed by the Corporation Commission of Oklahoma, and the complainant is in the premises estopped by its voluntary conduct aforesaid to complain that it has not up to such time received a rate sufficient to enable it to make provision for depreciation and amortization.

On April 19, 1918, in Cause No. 3332 before the Corporation Commission of Oklahoma complainant prayed for an increase in its rates, and an order, same being order No. 1418 of the Corporation Commission, was made on June 21, 1918 increasing the rates of the complainant in accordance with the prayer. The complainant never indicated any dissatisfaction with the rates fixed in said Order No. 1418, never moved for a rehearing in said cause, and never appealed from said order to the Supreme Court of Oklahoma as it had a right to do if it had been dissatisfied therewith, and, in the premises the complainant is estopped by its conduct to complain that it has not been permitted to charge rates sufficient to make provision for returns on investment, depreciation and amortization until the date of its next application to the Commission upon which an order was issued on September 1, 1919 from which the complainant did not appeal and is likewise estopped from complaining, as respects the period from said September 1, 1919 to April 1, 1920, as to the insufficiency of its rates and returns to make provision for depreciation and amortization, by its conduct in acquiescing in said order and in failing to exercise its privilege of appealing therefrom to the Supreme Court of Oklahoma, as was its right.

The defendants deny that the going concern value of complainant's property was or is 15% or any other percentage of its original cost, and say that those elements which are theoretically considered as entering into going concern values in the valuation of public utility properties for rate making purposes are lacking and absent with respect to the complainant's properties.

With respect to complainant's allegation that its taxes and other expenses for its production and transmission systems for the year

ending October 31, 1921 were \$3,814,422.09, exclusive of depreciation, amortization, interest or dividends on the investment and the expense of building new lines to new gas fields, the defendants aver that the said figures, even if true and of the truth of which the defendants demand strict proof, and until proven deny, are not

91 pertinent in that included therein are the expenses of its production system pertaining to its private business not competent to be considered in determining its operating expenses in its public utility capacity, and further in that the period of the one year ending October 31, 1921 would furnish no reasonably certain or reliable data or basis for testing or determining the accuracy of the rates fixed in Order No. 1886 aforesaid, for the reason that the rates so fixed are reflected in such figures, if such figures be true, only for the period of the three months of August, September and October, which are warm months and which in the year 1921 were abnormally warm months, in consequence of which a less volume of gas was sold than normal during such months. Furthermore, nine months of such annual period, in fact, as respects the cities and towns served by the Oklahoma Gas & Electric Company as alleged in the bill of complaint, between ten and eleven months of such period, were of a kind during which the complainant under its voluntary divisional contracts was compelled to sustain the loss from leakage due to the faulty and defective and excessively leaky condition of the local independent distributing systems, which is obviated by the abrogation of such divisional contracts by the said Order No. 1886.

In the premises, not sufficient time has elapsed since the taking effect of said Order No. 1886 to furnish any data as to expenditures or costs of operation under such order which would furnish any accurate or reliable data or basis for comparison with the income which by argumentative deductions is hypothetically asserted in the bill of complaint to have been receivable from operations during the said period. And, as respects the allegation in the bill of complaint in the paragraph next succeeding that above referred to dealing with the question of the sale of gas during such period for industrial and domestic use, and as to the leakage in the distributing plants and the gross and net income which would have been received if the facts therein assumed had been true, the defendants say that they deny the truth of the facts alleged to be facts and assert that the calculations, deductions and assumptions therein appearing are unreliable and inaccurate for the reason that they do not take into

92 account leakage in the lines and general transmission and distributing plants outside of cities and towns; that the leakage in such general transmission systems is, as defendants are informed the managing officers of complainant admit and profess and upon which information and admission the defendants allege the fact, accordingly, 20% of the gas placed in such general systems; whereas, in point of fact, a reasonable leakage should not exceed in such transmission lines 5% of the total gas put through such systems; that, in point of fact, all estimates as to leakage are but estimates and that measurements have never been made as to the

amounts of gas placed in the transmission systems of complainant from its own production and measurements have not been made for a sufficient length of time and during sufficiently varying weather and pressure conditions to with any degree of accuracy determine the amount of leakage in the local distributing plants whether of the complainant or independent local distributing companies, except, perhaps, one of such companies, and that in the premises the extent of such leakage is conjecture when calculated upon the conditions of weather and pressure prevailing throughout a normal year; and that as respects leakage, but one thing has been developed as reasonably sure and that is that leakage in both transmission and in local distributing plants is grossly excessive.

The city gate rate prescribed in Order No. 1886 has been in force but five months and no data is available as to the effect of its operation except during four of the five months, such four months having been warm months in normal years and abnormally warm in the year 1921, and due to the conjectural basis of all of the calculations in the paragraphs of the bill of complaint here being answered, being predicated upon an assumed ratio of leakage, unreliable as aforesaid, the calculations and the speculative matter set out in the paragraphs here being answered (pages 12 and 13 of the bill of complaint), and the entire matter of comparison, as between that paragraph and the preceding paragraph and all the deductions drawn therefrom, are unreliable and so affected with infirmities as not to fulfill in  
93 any respect the standard of definiteness and certainty required to be established in order to warrant an interference with the enforcement of legislative orders of the state.

The defendants deny that the original cost of the production and transmission systems of the complainant was or is \$15,216,907.64; deny that the going concern value was or is \$2,252,536.15; and deny that the working capital equivalent to one and one-half percent was or is \$494,382.39, and deny that the total value or rate base, on historical cost theory, was or is \$17,992,826.10, and say that a maximum rate base permissible or allowable on the original cost of production and transmission systems is as assumed in Exhibit "A" and that from the assumption there appearing, in order to obtain a fair rate base, there should be deducted many millions of dollars as for the production portion of the system included in the calculation made in Order No. 1886, and that the going concern value element of 10% as therein assumed should be eliminated altogether, and that in figuring the element of working capital there should be excluded from the same that portion of the expense of operation for one and one-half months properly allocable to the production and private activities of complainant.

As to the allegations as to the sales of gas during the several years, the defendants say that while it may be true that during the year 1917 the complainant sold twenty-nine billion cubic feet of natural gas, yet not less than twelve billion of such amount was by it sold not to the consuming public but to competitors engaged in the business of producing and supplying gas, largely in the state of Kansas, to

customers other than the customers of the public utility properties of the complainant. That during said year of 1917 the complainant furnished and sold to the patrons of its public utility properties and to the public utilities named in its bill of complaint not to exceed 17,101,000,000 cubic feet of gas. The figures given as to its gross sales in 1918 likewise include large quantities sold to other than the patrons of its public utility property and the public utility properties referred to in its bill of complaint, as is also true to a lesser

94 degree respecting its gross sales in 1919. During the years 1919 and 1920 large quantities of gas sold by the complainant were sold to industrial users, but during the latter part of the year 1920 and during almost the entire of the year 1921, the price of fuel oil and coal so diminished as that natural gas at the prices then prevailing and charged for its use for industrial purposes was unable to compete with such sources of heat and energy, by reason of which fact the quantity of sales was diminished. Sales of gas for industrial uses has gradually diminished, in consequence of which the complainant has sold less gas at the cheaper or industrial rate, but the quantity of sales for domestic purposes and at the higher rate prescribed for domestic purposes has largely increased and is increasing. Moreover, by the diminishing of the quantity of the gas used for industrial purposes there has been a conservation of gas for domestic purposes, sold at higher prices, in consequence of which in the long run the complainant will, in the premises, be greatly benefitted. And, in this view the officers of the complainant have in their testimony before the Corporation Commission of Oklahoma taken the position that it is desirable from their standpoint that the price fixed for sale of gas for industrial purposes should be so high as to discourage the use of natural gas for manufacturing or industrial purposes.

The defendants admit that the complainant has operated under the rates prescribed by Order No. 1886 since July 1, 1921, but as respects the allegation in the paragraph in the bill of complaint (page 14 thereof) as to the excess of its "out of pocket" expenses over its gross income during such period having been approximately \$75,000.00 per month, defendants say:

The period during which it has operated under said order has been an abnormally warm period and has been abnormal with respect to the sale and distribution of natural gas within the State of Oklahoma, and that said period has not been a fair time within which to test the reasonableness or sufficiency of the rates prescribed  
95 in Order No. 1886 upon the fair value of complainant's property used and useful in its public service business. The five months of July, August, September, October and November, 1921, due to the heat of the summer and mildness of the fall months during said year, having in mind that by far the greater quantity of complainant's gas is sold for domestic and home heating purposes, could not be expected, even if such months had been of normal temperatures, to have yielded a gross revenue sufficient to produce adequate earnings for such period alone. By far the greater quantity

of gas, under conditions existing where domestic and home users are the principal purchasers, is sold during the months of December, January, February and March, which, taken of themselves alone in normal years would produce excessive and unwarranted net earnings, and in the nature of the business of the complainant at this time in the State of Oklahoma it would require the varying temperatures in a normal year to demonstrate whether or not the rates prescribed in Order No. 1886 would produce an adequate return upon the complainant's property used and useful in its public utility business. And, the defendants allege that the rates fixed in said order were not intended, nor is the complainant entitled to have had the rates fixed, in said order, to have been so fixed as to yield a return adequate and sufficient for any isolated months or series of months of the year, but were intended, the calculations thereof and the determination and fixing the amounts thereof having been based upon experience insofar as comparative data was available, to yield an adequate return for yearly periods embracing all the varying weather conditions normally occurring in the yearly period.

During the year of 1921, and inclusive of the four or five months under which complainant has operated since the effective date of the order complained of, has been abnormal in that the price of fuel oil has been such that this gas company as well as other companies engaged in a similar business, has not seen fit to compete with the price of fuel oil as a fuel for industrial consumption, and that as a result complainant has lost a large amount of the business heretofore done in serving industrial institutions; that the condition with reference to the price of fuel oil has continued into the early portion of the period since July 1, 1921, the effective date of Order No. 1886 establishing the present rate under which complainant operates, but of recent months fuel oil has so advanced in price as to warrant the expectation that with continued upward trend in prices thereof gas can be sold in competition with fuel oil with the result that complainant's income and profit from the sale of industrial gas will be resumed.

Moreover, the defendants deny that the complainant is entitled to have all of its actual "out of pocket" expenses considered in any event, and say that the out of pocket expenses alleged include to a large extent expenses not properly chargeable to the public utility business of the complainant.

The defendants admit that the Corporation Commission of Oklahoma refused to adopt and use the reproduction costs of the complainant's production and transmission property less depreciation as the basis of complainant's rates, but say that in so doing the result was not to deprive the complainant of its property without due process of law for that the reproduction costs is not alone the basis for determining the fair value of a public utility property at the time it is being used in public service, but is only one of the elements to be considered in valuing such a property. That the reproduction cost data and figures offered by the complainant in evidence in the hearing before the Commission was based upon the application of labor

and material costs at the very peak of abnormal and unusual prices and costs of such elements, resulting from the prosecution of the late war, which prices were so abnormal that the reasonable dictates of prudence require that in the estimation of the value of the property such figures be very largely discounted; and that as was foreseen by the Commission at the time of the hearing resulting in the promulgation of said Order 1886 prices of labor and material have so declined, as shown by testimony under oath introduced in evidence in the rate hearings conducted before the Corporation Commission within the past months as that if present day prices of labor and material were applied to the units included in the inventory and reproduction cost appraisement introduced in evidence before the Commission, the undepreciated reproduction cost of the production and transmission systems of the complainant would not exceed \$18,000,000.00, and that depreciated as of this time the depreciated reproduction cost of complainant's production and transmission systems would not exceed at this time \$14,400,000.00, even upon the items included in the inventory in evidence before the Commission in said cause and without deducting therefrom those portions of the properties included in such inventory properly allocable to purely private portions of the complainant's business and without deduction therefrom, furthermore, those elements and items of such inventories, consisting of a large portion thereof, which by reason of exhaustion of the fields as alleged in the complainant's bill, have ceased to be used or useful in serving the public. Nevertheless, as Exhibit "A," which is a copy of said order, shows, due consideration was given to the evidence which was submitted as respects the reproduction cost. The defendants suggest the legal insufficiency of the allegations here being answered for the reason that the pertinent inquiry is, not whether the Corporation Commission erred in giving or not giving weight to any particular consideration, but whether the rates fixed by the Corporation Commission and here attacked yielded an adequate return upon the present value of complainant's property and used and useful in serving the public.

In the premises the defendants ask that the Court disregard the allegations of the bill complaining of what the Corporation Commission did or did not do as respects reproduction cost and as respects going concern value as alleged in the bill of complaint.

The defendants admit that the business of producing and transporting gas for public use is a most hazardous enterprise, especially in the private or producing end thereof, and admit the accuracy of the complainant's deductions respecting the replenishing of water supplies by the falling of rains and the melting of snow, and that natural gas is never regenerated by artificial process.

As respects the allegation that the supply of gas in Oklahoma is nearing exhaustion and the assertion of the United States Geological Survey as to the supply of gas in the Mid-Continent Field, the defendants admit that the complainant and the United States Geological Survey so conjecture and assert, and while the defendants admit that the complainant has increased its investment from year to year, they

deny that it has ever been required so to do, and assert that in so doing the defendant has done so well grounded in the knowledge of the truth of its observation that the business of producing and transporting natural gas is a hazardous business and in voluntarily so doing the defendants assert that the complainant has itself assumed the hazard.

If authority exists in the Corporation Commission to require the complainant to extend its lines to new or additional fields in order to continue to supply its patrons with gas, nor has the Corporation Commission of Oklahoma *has never* attempted to require the complainant to extend its fields, though in more than one proceeding before the Commission instituted by the Complainant in which the complainant has voluntarily represented that it would make extensions if it were allowed increases in rates from which it might be compensated for outlays incident to making such extensions, the Corporation Commission has granted increases which should become effective upon the making of such extensions, but in no case has the Corporation Commission attempted to require the making of such extensions.

In the premises the defendants deny the pertinency of the allegations of the bill respecting the expense of its so-called required extensions and say that the expenditures by it made in connection with such extensions to new fields are not pertinently comparable to its net income during the period alleged and that the only relevancy of the cost of such extensions to the rates complained of is the bearing which the expenditures incident to such extension has upon the value of complainant's properties used and useful in its service of the public, and that always such expenditures for extensions,

99 if really and properly made, are entitled to weight and bearing only as additional capital outlay and investment and are in no sense to be considered as an expense in furnishing gas.

Moreover, defendants allege that the intrinsic value of gas in the State of Oklahoma is not such as to warrant the fixing of a rate which would produce a return to the complainant sufficient to provide for profits or dividends upon the enormously excessive valuations claimed by complainant for its properties plus the enormously excessive reserve for depreciation and to make the enormously excessive provision which it claims necessary for amortization, and that the complainant is not entitled as a matter of Constitutional right to have a rate fixed for the commodity furnished by it in excess of the intrinsic value of that commodity regardless of the fact, if it were the fact, that such rate would be necessary to produce the income by it alleged to be required for such purposes. In other words, the defendants state that the complainant in voluntarily entering upon the service of the public itself assumed and is required to sustain and suffer the losses incident to the hazardous character of that business as by it alleged to exist. In this connection the defendants aver that the complainant is in connection with its gas business also engaged in the business of producing oil and that as a part of the costs to it upon the original cost figures alleged it has included millions of dollars for the cost of highly speculative and so-called wildcat leases; that

in developing and testing such wildcat territory the same has been mostly developed and tested in the guise of testing for gas, and the defendants are informed by the sworn testimony of a director and active vice-president of the complainant corporation that as a rule when the complainant was testing out wildcat territory "probably 95% of the time" was "wildcatting for gas," and the expense of such wildcatting experimentations has been charged as an expense to the gas property excepting those cases in which oil has been discovered, in which case the cost of drilling the private well has been charged to its private oil operations.

100 In the development of 107,000 acres of leases in the Osage Country much of the wildcatting was two or three miles in advance of definitely developed territory and in a majority of such tests in advance the wells have been brought in dry, notwithstanding which as to all of the enormous numbers of acres upon which the complainant has in the past and now holds leases rental charges on such leases have been charged as gas expense and the wildcat development has been charged as gas expense. The defendants alleged that such highly speculative and hazardous undertakings and the expenditures incident thereto are not entitled to be charged or considered in connection with the determination of a proper rate or proper valuation for rate making purposes of a public utility, for that if such elements are considered the result would be, with respect to complainant's property, that the public would be required in the form of rates to compensate the complainant for its losses incurred in such speculative ventures, whereas the complainant in its private capacity would reap the profits of that portion of its development which resulted in the production of oil.

Moreover, the complainant, purporting in this connection to act in its private capacity, extracts from all, or substantially all, of the gas transmitted through its lines the gasoline content thereof to its great benefit and profit and does not credit the net profits resulting from such gasoline extraction to its gas account and the profits therefrom are not applied in deduction of its general gas expenses, and are not reflected in the income figures alleged in the bill of complaint though the same are derived directly from operation in connection with the conduct of its gas utility business.

Defendants admit that the gas fields from which the complainant originally obtained its gas are exhausted and that many of the fields to which complainant has built its lines have also been exhausted by reason of which facts they allege that the properties and lines used for the transmission of gas from such lands are no longer useful in the business of complainant. They further allege that

101 many other of the fields from which the complainant obtains gas and within which it owns leases have been so nearly, if not quite, exhausted as that the value thereof as being used and useful in the business of complainant is so diminished as not to be of an appreciable amount, though same was considered in the calculation of the reproduction cost and of the historical cost as having the same value as at the time when built or acquired.

The defendants deny that it would be impossible for complainant to continue its business for a longer period than eight years and say

that the allegations respecting such matter and the not impossible reduction of that period to one-half thereof are purely speculative and conjectural.

The defendants deny that the complainant is entitled to earn as returns on investment 10 per centum per annum, and say that 8 per centum per annum is sufficient for earnings on investment and that 8 per centum per annum is sufficient for depreciation and amortization, and that the earnings of the complainant in the past have been sufficient to completely amortize its original investment and that if that be not the case it is due to complainant's own voluntary action as hereinbefore set out; that a sufficient fund for depreciation and amortization has not been set aside and provision made therefor and that the cause should be considered as though during all of the years of the complainant's existence and service to the public it has made adequate returns for depreciation and amortization.

Defendants deny the relevancy of the allegation that under the rates fixed by the Corporation Commission complainant's earnings have not been sufficient with which to build the new lines to new fields which complainant alleges it has been required to build in order to continue its business and with respect to such particular allegation they reiterate the allegations hereinbefore made as to such matter. They deny the allegation as to the intrinsic worth of natural gas to the domestic consumer.

Defendants are informed, and hence allege the fact to be, that with a very little additional capital expenditure the complainant could acquire large quantities of gas from private producers at prices much below the prices which it pays voluntarily for gas by it transmitted for use by the public, and that if the complainant conceives itself to be under the duty of extending its lines to new gas fields and territory it has not conformed to that duty in making extensions to new fields and in obtaining gas therefrom at such reduced prices as would enable a justified reduction of rates to patrons of its public utility business, and that this is a matter which should be considered in determining the adequacy of its return.

Defendants deny each and every allegation in the complainant's bill of complaint to the effect that the rates fixed by said order are inadequate and unremunerative or confiscatory as to any or all of complainant's property or that the said rates will operate or do operate to deprive complainant of its property or any part thereof of an adequate return on its property or any part thereof without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Defendants specifically deny the allegations set forth in complainant's bill in which it is averred that complainant has no adequate remedy at law, and assert the fact to be that under the terms and provisions of the Constitution of the State of Oklahoma and the laws enacted pursuant thereto, a plain, adequate and complete remedy is allowed on an appeal from the orders of the Corporation Com-

mission to the Supreme Court of the State of Oklahoma, and that for this reason the federal court should not entertain jurisdiction for the purpose of granting a temporary injunction. The remedy at law which is available to complainant herein is first by motion filed with the Corporation Commission of the State of Oklahoma to modify and set aside its Order No. 1886; second, by an appeal to the Supreme Court of the State of Oklahoma which it is alleged in plaintiff's bill is being taken advantage of, and by reason of which, under and by virtue of Section 267 of the Judicial Code of the United States, this action cannot be sustained.

103 Defendants further say that this court is without jurisdiction to grant the relief prayed for herein for the following reasons; that said Order No. 1886 and the proceedings prior to its rendition were judicial in their nature and involved a judicial inquiry into the facts, and judicial construction of the laws of the State of Oklahoma and the application of said laws as construed to the facts found; that entertaining said proceedings in hearing and determining same and in making said order, the Corporation Commission of Oklahoma, Campbell Russell, Art L. Walker and E. R. Hughes acted judicially as a court and that under and by virtue of Section 265 of the Judicial Code of the United States this court is without jurisdiction to stay said proceedings and that the remedy of the plaintiff herein is by appeal to the Supreme Court of Oklahoma as provided by the laws of the state.

Defendants further say that if said proceedings and promulgation of said Order No. 1886 are legislative in character, said order has heretofore been made the legislative power already exercised and said order of record; that any further duty or power which this Commission or its membership may be called upon to exercise in connection with said order, must and will be judicial in their nature and under Section 19 of Article 9 of the Constitution of Oklahoma, the same would be a judicial proceeding and that this Court is without jurisdiction to enjoin the Corporation Commission of Oklahoma from acting as a court or from hearing any judicial proceedings which may be brought before it looking to the enforcement of said Order No. 1886.

Defendants further aver that if said proceeding and the promulgation of said order is legislative in character, that this court is without jurisdiction for the reason that the Constitution of the State of Oklahoma and the laws passed pursuant thereto, specifically confer the right of appeal from said Commission to the Supreme Court of this state, and this action should not be commenced until the said order has been affirmed by the Supreme Court of Oklahoma, that body having authority and possessing the power to say the last word in such legislative proceedings, and that therefore this suit is prematurely brought and should be dismissed.

104 Defendants aver that under Chapter 93, Session Laws 1913 of the State of Oklahoma, the Corporation Commission of the State of Oklahoma is given general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations affecting their services, operation, and

the management and conduct of their business, and to inquire into the management of the business thereof and the method in which same is conducted, and that said act of the legislature granted full visitatorial and inquisitorial powers to examine such public utilities and keep informed as to the general conditions, their capitalization, rates, plants, equipments, apparatus and other property owned, leased, controlled or operated, value of same, the management, conduct, operation, practices and services not only with respect to the adequacy, security and accommodation afforded by their service, but with respect to their compliance with the provisions of this act, with the Constitution and laws of the State of Oklahoma, and with the orders of the Commission; and that if it should be contended that said Corporation Commission erred in determining the facts, nevertheless the laws of the State of Oklahoma grant an appeal to the Supreme Court of Oklahoma where said facts may be reviewed and any error of this Commission in the determination thereof or in the application of the law thereto, may be corrected, but that this court is not vested by law with any appellate jurisdiction over this Commission and has no power to review its action in cases such as this, and that the jurisdiction of the Supreme Court of Oklahoma to review the action of the Commission on appeal cannot be divested by an action of this court based upon the alleged erroneous findings of fact or an erroneous application of the the state laws to the facts found or the alleged unconstitutionality of such orders so made by said Commission.

### Distributing Systems.

For sake of brevity defendants make common answer to the allegations of the Bill of Complaint respecting the several local distributing systems named in the Bill. Defendants deny the allegations respecting "reproduction value," going concern value, working capital and depreciation made in the bill respecting the several local systems, and as respects such allegations make, by reference, and to avoid repetition, the same allegations as have been hereinbefore made in answer to like or similar allegations of the Bill of Complaint concerning the transmission system of complainant.

To the allegations as to the amounts of gas sold for the several periods named, in the several local distributing plants, the defendants are unable to make denial of the figures set out because of lack of adequate data; hence, thereto, they demand strict proof. But they say that such figures are impertinent in any event and even if true do not furnish any proper basis of attack upon the rates prescribed for such cities and towns in that all such data and figures show only the amount of gas which was collected for during the respective periods, and do not furnish reliable information as to the unaccounted for gas which was largely lost due to the excessive leakage in said systems as hereinbefore alleged. No sufficient time has elapsed, since measurements have been undertaken to ascertain actual leakage during varying conditions of weather and pressure within which to reasonably and reliably disclose the extent of such

excessive and wasteful leakage; but it is admittedly not less than twenty per cent, one half of which is inexcusable. For such excess leakage, not less than ten per cent of the entire volume of gas forced into such distributing systems, the public should not be required to pay, such loss not being the fault of the public but solely the fault of complainant. Even upon the values of the several distributing systems claimed by complainant the rates prescribed for the respective towns and cities would yield sufficient return to  
106 provide for depreciation, reasonable amortization and reasonable return on such values, when the burden for such excessive leakage is placed, as it belongs, upon complainant. Defendants reiterate, as to each local distributing system, the allegations hereinbefore made as to the general system of complainant respecting the insufficiency of the time which has elapsed since the making of the order complained of to properly test the adequacy of the rates therein prescribed, and respecting the abnormal weather conditions which have prevailed during such time, and respecting the availability of a remedy before the Corporation Commission if new or un contemplated conditions have arisen or if the experience of the past upon which such rates were predicated has been demonstrated by the experience since such rates were made to have been unreliable and no proper predicate for rates. Further, defendants reiterate as to each such local distributing system the facts hereinbefore alleged respecting reductions in the costs of labor and material which have occurred since the inventories of such properties were made, and the effect of such reductions upon not only the cost to reproduce properties of the character of complainant's properties, and allege that the present day cost to reproduce such properties, respectively, would be less than the historical cost of such properties as respectively found in the said Order 1886, adopted therein as the rate base, and that, with proper management the cost of operation should greatly diminish.

As respects each of such local distributing systems defendants adopt and reiterate the allegations hereinbefore made with reference to the voluntary fixing of rates in such systems by the complainant the failure of complainant to resort to the Corporation Commission for increases in the rates so voluntarily put into effect by complainant, and the estoppel arising therefrom to complain that such voluntary rates did not produce adequate return to provide for profit on the fair values of such properties and for depreciation, and the correction of leakage, and amortization, and allege that each such property has under such voluntary rates not only earned sufficient for all such purposes but that the amounts which should have from such earnings been put aside for depreciation and amortization have either been distributed amongst the stockholders of the complainant  
107 or else used in additions to such plants, and that the amounts so distributed and used should be deducted from the properties from which earned to find a fair rate base, and that the complainant is not entitled to again earn therefrom on the amounts so used or to again provide funds to take the place of those so distributed to its stockholders. Also, defendants deny, as respects each

such distributing property as to which the same is alleged in the bill, the allegation that such property has not in the past had sufficient earnings to provide for depreciation and amortization and to correct leakage, and as to such matters say that the statements hereinbefore made respecting same are true. In the same connection they say that in several of the cities and towns served by such local systems such systems will be available, with reasonable repairs, for use for the distribution of manufactured gas, and will not have to be junked, and that with the rapid growth of the cities and towns so served, by the time natural gas shall have been exhausted in Oklahoma they will have attained sufficient population to make the manufacturer of gas for sale therein profitable and feasible; by reason of which fact the statements of the bill as to the percentage of value to be provided from income for the purpose of amortization is greatly excessive.

As to the matter of excess of actual over permissible and properly excusable leakage in all of the properties of complainant, defendants say that the defects and inefficiencies in the physical properties of complainant as the result of which such excess occurs greatly diminish the value of such properties under what their values would be except therefor, and that if the actual extent of such excess leakage were known the values of such properties, as properly thus diminished would reduce the values far below those on which the rates were based as shown by the said Exhibit "A"; and in any event the values of such properties do not exceed those assumed in such order as the rate base for such properties respectively.

As to the allegation that the Corporation Commission has not heretofore fixed any standard of leakage applicable to the State of Oklahoma at large, defendants say that such matter has never been brought before the Commission in any general hearing applicable to all gas distributors of the State. The Commission has, however,

108 as to the subject of leakage as it has arisen in connection with particular utilities whose rates have been the subject of investigation by it, considered the matter of leakage, and in making the order herein in controversy, it considered that question. The said Commission has never in any cause in which the said question has arisen permitted any compensation for leakage in excess of ten per cent in local distributing plants, and in the making of the order here in question considered the question of leakage in complainant's system and upon the evidence then available held that such leakage "averages about ten times the amount allowed by recognized standards," notwithstanding which the Commission allowed consideration for leakage to the extent of 10%, but refused to allow for more than that percentage, properly placing the burden for leakage in excess thereof upon the complainant, where it belonged; and complainant is not entitled to complain thereof, but by reason of the faults of complainant in respect of leakage, the income of complainant from its systems is, in considering the adequacy of return to it, properly required to have added to the actual income not less than the rate fixed as applied to not less

than an additional ten per cent of the entire of such actual income.

Defendants object to the consideration of the many purely argumentative and deductive matters set forth in the bill of complaint where such allegations are based upon assumptions and upon facts appertaining to dissimilar conditions.

In the premises, defendants deny that the rates fixed for the respective towns and cities served by the local distributing properties of the complainant are such as to deprive it of its property therein without due process of law.

Wherefore, defendants and each of them ask that the bill of complaint be dismissed; that the injunctive relief prayed for by complainant be denied; that the court, in any event, refuse to restrain the orderly processes of the administration of the provisions of the Constitution and laws of Oklahoma respecting the making of rates until such processes shall have been completed, and that the complainant be required as a condition to further proceedings  
109 herein to resort to its legal remedies under the Constitution and Laws of Oklahoma respecting the matters by it set up. And defendants pray that they may be dismissed hence with their costs.

E. S. RATLIFF,  
HENRY G. SNYDER,  
*For Corp. Com.*  
LEROY J. BURT,  
*For City of Sapulpa.*

110 STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

Before the undersigned Notary, in and for said county, personally appeared Campbell Russell, Chairman of the Corporation Commission of the State of Oklahoma, being duly sworn, says that he is the Chairman of the Corporation Commission of the State of Oklahoma and one of the defendants in the foregoing styled and entitled cause; that he has read the foregoing answer, is familiar with the facts therein stated and the averments therein contained and that the same are true except as to those stated upon information and belief, and as to them he believes them to be true.

CAMPBELL RUSSELL.

Subscribed and sworn to before me this 20th day of January, 1922.

[SEAL.]

J. S. GRAM,  
*Notary Public.*

My Commission expires Jan. 1, 1923.

111 STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

Before the undersigned Notary in and for said county, personally appeared W. E. Grimes, Auditor of the Corporation Commission of

the State of Oklahoma, being duly sworn, says that he is the Auditor of the Corporation Commission of the State of Oklahoma; that he has read the foregoing answer, is familiar with the facts therein stated and the averments therein contained and that the same are true except as to those stated upon information and belief, and as to them he believes them to be true.

W. E. GRIMES.

Subscribed and sworn to before me this 20th day of January, 1922.

[SEAL.]

J. S. GRAM,  
*Notary Public.*

My Commission expires Jan 1, 1923.

112 Before the Corporation Commission of Oklahoma.

Cause No. 4023. Order No. 1886.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Petitioner,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation; GUTHRIE Gas, Light, Fuel & Improvement Company, a Corporation; Muskogee Gas & Electric Company, a Corporation; Shawnee Gas & Electric Company, a Corporation; The Commonwealth Public Service Company, a Corporation, and W. L. Curtis, Receiver Thereof; The Southwestern Oklahoma Gas & Fuel Company, a Corporation; Midfield Gas Company, a Corporation, and the Following Cities and Towns, to wit, Oklahoma City, El Reno, Enid, Guthrie, Muskogee, Wagoner, Tulsa, Chandler, Pond Creek, Claremore, Yukon, Red Fork, Turley, Dawson, Stroud, Davenport, Wellston, Luther, Edmond, Meeker, Arcadia, Kellyville, Midlothian, Depew, Hunter, Nardin, Deer Creek, Lamont, Peckham, Inola, Porter, Ramona, Haskell, Coweta, Shamrock, Sapulpa, and Carney, All Being Municipal Corporations of the State of Oklahoma, Respondents.

*Order.*

The Oklahoma Natural Gas Company is a public utility as defined by the Act of the Legislature of Oklahoma approved March 25, 1913. It is engaged in the production, purchase, transmission and distribution of natural gas. It owns the distributing plant in Tulsa, Chandler, Pond Creek, Claremore, Red Fork, Turley, Dawson, Stroud, Davenport, Wellston, Luther, Edmond, Meeker, Arcadia, Kellyville, Midlothian, Depew, Hunter, Nardin, Deer Creek, Lamont, Peckham, Inola, Porter, Ramona, Haskell, Coweta, Shamrock, and Sapulpa. In each of the towns and cities above named the Oklahoma Natural furnishes gas directly to the public.

The Oklahoma Natural Gas Company also furnishes gas to the incorporated town of Carney, which town owns its own distributing

system, and the petitioner's gas is purchased by said town at the city gates.

The Oklahoma Natural Gas Company also furnishes gas to the Midfield Gas Company, which owns the distributing systems in Oilton, the said gas being sold to the Midfield Gas Company at the city gates of Oilton.

The Oklahoma Natural Gas Company also furnishes gas to the Southwestern Oklahoma Gas & Fuel Company, which owns the distributing systems in the cities of Duncan and Marlow, the said gas being sold to said Southwestern Gas & Fuel Company at petitioner's lines.

113 The Oklahoma Gas & Electric Company owns the franchises and the distribution plants in the cities of Oklahoma City, El Reno and Enid and in the towns of Yukon and Britton. The gas consumed in said towns and cities is produced or purchased by the Oklahoma Natural Gas Company and is transported to said cities and towns by said company through its lines, and is delivered into the distributing lines of said Oklahoma Gas & Electric Company at the corporate limits of each of said cities and said towns, and is distributed to the inhabitants and industries thereof by said Oklahoma Gas & Electric Company under a contractual arrangement which has heretofore existed whereby said Oklahoma Gas & Electric Company obtains and receives one-third of all collections made for the gas sold for domestic purposes and one-fourth of all collections made for gas sold for industrial purposes, the other two-thirds of the collections made for gas used for domestic purposes and the other three-fourths of the collections made for gas used for industrial purposes being paid by the Oklahoma Gas & Electric Company to the petitioner, Oklahoma Natural Gas Company, for the gas furnished by said company.

In the City of Guthrie the Guthrie Gas, Light, Fuel & Improvement Company owns the franchise and distributing plant for natural gas and it obtains the gas from the Oklahoma Natural Gas Company and distributes the same in the City of Guthrie in the same manner and under the same contractual arrangements set forth above with respect to the Oklahoma Gas & Electric Company.

The Muskogee Gas & Electric Company owns the franchise and the distribution system in the City of Muskogee, and it obtains the gas from the Oklahoma Natural Gas Company and distributes the same in the City of Muskogee in the same manner and under the same contractual arrangement as is set forth above with respect to the Oklahoma Gas & Electric Company.

The Shawnee Gas & Electric Company owns the franchises and distribution system in the City of Shawnee, and it obtains the gas from the Oklahoma Natural Gas Company and distributes the same for the same percentage of the collections as do the other distributing companies above named, though, as it is said, without any actual contract to that effect.

The Commonwealth Public Service Company, of which W. L. Curtis is now the receiver, owns the franchise and the distributing

plant in the City of Wagoner; and it obtains the gas from the Oklahoma Natural Gas Company and distributes the same in said City in the same manner and under the same contractual arrangement as is set forth above with respect to the Oklahoma Gas & Electric Company.

In each of the towns and cities above mentioned in which the Oklahoma Natural Gas Company does not own the distributing system all loss caused by leakage and shrinkage in the distributing system owned by the local distributing companies, and all losses from unpaid bills, fall upon the Oklahoma Natural Gas Company.

On August 5, 1920, the Oklahoma Natural Gas Company filed its petition herein alleging the facts above stated, and also alleging that the existing rates for gas in each and all of the towns and cities served by it, both directly and indirectly, are unremunerative, and do not render to the petitioner a reasonable return upon the value of the property used and useful in rendering said service. The petitioner further alleged that the circumstances and conditions relating to and affecting the production, transmission and distribution of natural gas in the State of Oklahoma has

114 become such as to render the so-called percentage contracts with the local distributing companies inequitable and unjust, and to interfere with the proper exercise by the Corporation Commission and by the State of Oklahoma of the power and duty of regulating the rates and practices of public utilities engaged in the business of furnishing natural gas in this state. The petitioner alleged that the supply of gas has been steadily decreasing for several years, that the gas fields from which petitioner obtained gas at the time of the execution of said contracts have been exhausted, and that the petitioner has been required, in order to obtain and furnish gas, to expend yearly enormous sums in extending its pipe lines to new and distant fields, which, in turn, have soon failed, and to largely increase its investment, and that in the last three years petitioner has been required to increase and has increased its investment by extending its pipe lines, building compressor stations and laying field lines, for the purpose of obtaining and furnishing natural gas, in a sum in excess of \$4,500,000. It is further alleged that at the time said percentage contracts were made the petitioner was able to buy gas in the field for from 2½ to 3 cents a thousand cubic feet, whereas petitioner is now required to pay ten cents per thousand cubic feet for the gas purchased by it.

It is further alleged that the cost of every element entering into the production and transmission of gas, including the cost of drilling, the cost of casing for wells, the cost of pipe for pipe lines and field lines, and the cost of labor of all kinds and character and the cost of all machinery for compressor stations has greatly increased, and the cost of gas in the field has more than trebled since said percentage contracts were entered into.

The petitioner also alleges that while it has been required to make extensive additions to its production and transmission equipment and to its investment, and has been required and is being required to pay more for gas in the field, the local distributing companies

above named as respondents have not been required to increase their investment on said account, and have remained unaffected by the increased cost of procuring and transporting gas and the increased cost of gas in the field, and have suffered no increases in their operating expenses beyond such general increases as the higher cost of labor which affects all alike has caused; and that the percentage of the collections made for gas by said local distributing companies due and payable to the Oklahoma Natural Gas Company under any reasonable rate which might be fixed, is not and would not be remunerative to the petitioner, although the same would give to the local distributing companies an exorbitant return.

It is further alleged that the distributing systems of the local distributing companies are old, inadequate and leaky, that the leakage therein is undue, excessive and enormous, and causes a great and unnecessary loss to the petitioner; and that under said contractual arrangement said local distributing companies have no incentive to undertake to curtail said leakage, and for the most part have not undertaken to do so, but have permitted the same to become larger and larger each year.

The petitioner prayed, First, that the Commission make an Order relieving it from the obligation of furnishing gas to the Commonwealth Public Service Company and its receiver operating in  
115 the City of Wagoner; Second, that the Commission determine the reasonable value of the petitioner's property used and useful in procuring and transporting gas from the fields to the corporate limits of each and all the towns and cities served by it, both directly and indirectly, and also the operating and maintenance expenses of the petitioner, and therefrom determine and fix a rate to be charged by the petitioner at the city limits of each and all of the cities above named for gas delivered in the distributing systems of each of said cities, and that the petitioner be authorized and directed to furnish and deliver gas into the various distributing systems above named at said city gate rates, to be determined by the Commission instead of under the percentage contracts above mentioned; and, Third, that the Commission determine the value of the property of the petitioner used and useful in each of the towns and cities in which it owns the gas distributing system, and that it fix a reasonable and remunerative rate for gas to be charged by the petitioner in each of the said towns and cities.

The City of Claremore, and the towns of Ramona and Inola, each represented to the Commission that they were not on the main line of the Oklahoma Natural Gas Company, and that conditions existed peculiar to them, and that the case should be determined with respect to them upon separate hearings, and upon the application of the above named towns and cities the Corporation Commission ordered that Claremore, Ramona and Inola be eliminated from the hearing in so far as it affected the towns and cities on the main line, and that the case be heard as to them separately. The City of Enid also made the same request originally, but subsequently its representative withdrew that request and stated to the Commission that the City of Enid and the Enid system might be considered in connection with

the whole of the Oklahoma Natural Gas Company's system, and that whatever order was made should cover that system.

During the pendency of the proceeding the Oklahoma Gas & Electric Company and some of the other local distributing companies filed in the Supreme Court of Oklahoma an application for a Writ of Prohibition to prohibit the Commission from entertaining the petition of the Oklahoma Natural Gas Company for the fixing of a city gate rate, on the ground that the so-called percentage contracts were beyond the police power of the State and were inviolable, and that for the State acting through the Commission to undertake to fix a city gate rate and require the gas to be purchased by the local distributing companies and paid for at a city gate rate would impair the obligation of the percentage contracts in violation of the Constitution of the United States.

Pending the hearing and determination of said Writ of prohibition, the Commission, after many hearings had been had upon the petition of the Oklahoma Natural Gas Company, on December 20, 1920, made an Order fixing the following rates for natural gas in all the towns and cities served by the Oklahoma Natural, both directly and indirectly, excepting Claremore, Inola and Ramona, the town of Carney and the cities of Duncan and Marlow, to-wit: First 100,000 cu. ft. per month, 58¢ per M cu. ft.; next 400,000 cu. ft. per month, 50¢ per M cu. ft. net; all in excess of 500,000 cu. ft. per month, 40¢ per M cu. ft. net; and providing therein that all of the revenue raised by said rates in excess of the revenue which would have been derived under the rates existing at the time of the making of said order, should go to and be paid to the Oklahoma

Natural Gas Company, but not otherwise disturbing the percentage contracts existing between the petitioner and the local distributing companies, but retaining jurisdiction of the cause until after the decision of the Supreme Court of Oklahoma in said prohibition action, with power to revise the Order to conform to the decision of said court. It was provided in said Order that the increase of revenue accruing to the Oklahoma Natural Gas Company under the rates prescribed in said Order should be reserved and maintained as a special fund for the laying of additional pipe lines and installing compressor stations and such other improvements or betterments as should be necessary to provide additional supplies of natural gas for the patrons of the company.

Subsequently in a proceeding by writ of prohibition instituted by some of the towns and cities affected, the Supreme Court of Oklahoma held the Order of December 20, 1920, to be void on the ground, First: that the Commission was without power to prescribe a rate payable by the consumers or patrons of the local distributing companies direct to or for the benefit of the Oklahoma Natural Gas Company, because the latter company bore no direct relation to said consumers, and Second: that the Order as worded implied that the Commission was exacting from the public a contribution to the Oklahoma Natural Gas Company's capital account rather than the payment of a reasonable rate for gas.

As to the latter ground, the Commission was merely unfortunate in

expressing its purpose and intention. It intended the increase for the purpose of amortizing that portion of the pipe line and instrumentalities of the Oklahoma Natural Gas Company which became worthless by virtue of the exhaustion of the gas fields to which they were tributary, but the Commission intended by the order to see to it that the fund thus created for that purpose was not diverted to other uses, but was used in building other pipe lines and instrumentalities to take the place of those which became worthless, and thereby, not to increase the capital account of the Oklahoma Natural Gas Company, but merely to keep the same intact. At the same time that the Supreme Court held the Order of December 20, 1920, void, it also denied the application of the Oklahoma Gas & Electric Company and the other distributing companies for a writ of prohibition, and held that the Corporation Commission had jurisdiction to inquire into and determine whether or not a city gate rate should be fixed and established which the local distributing companies should pay for the gas at the city gates in lieu of the arrangements existing under the so-called percentage contracts.

The Order of December 20, 1920, having been held void, the case stands in the situation of having been filed, tried and presented, and of having never been determined. The Commission therefore set the same for further hearing on March 31st, which hearing having been had, the cause now comes on for final determination.

The Commission finds that the so-called percentage contracts alleged to exist between the petitioner, Oklahoma Natural Gas Company, and the local distributing companies in Oklahoma City, El Reno, Yukon, Britton, Enid, Muskogee, Wagoner, Shawnee and Guthrie, should be abrogated, and that natural gas should be furnished to those distributing companies by the Oklahoma Natural Gas Company, and to all other distributing companies served by the Oklahoma Natural, under the latter's legal obligation as a public service corporation at fixed rates per thousand cubic feet measured at the gates or borders of said cities and towns, instead of under said percentage contracts, for the following reasons, to-wit:

117 1. The Commission finds that when most of said percentage contracts were entered into, the Oklahoma Natural Gas Company was able to buy, and did buy, gas at the rate of \$100.00 for each gas well; and when others were entered into, the Oklahoma Natural could and did buy gas at from  $2\frac{1}{2}$  to 3 cents per thousand cubic feet. Since those contracts were entered into the price of gas in the field has steadily advanced until now the Oklahoma Natural Gas Company is required to pay ten cents per thousand for all the gas it buys; and a few days ago the Empire Gas Company bid  $11\frac{1}{2}$ ¢ per thousand for some gas which the Oklahoma Natural had been getting at ten cents, and by overbidding the Oklahoma Natural, the Empire took the gas away from it. As to the gas which the Oklahoma Natural produces itself, the cost of production, including labor, drilling, casing and gather in lines, has more than doubled since said percentage contracts were entered into.

In the transmission of the gas, the cost of pipe line and compressors has trebled in price since said contracts were entered into,

and the cost of labor entering into the laying of pipe lines and operating the compressor stations has more than doubled.

The gas fields from which the Oklahoma Natural was getting its gas when said contracts were entered into have been exhausted, and many new fields to which it has built lines since have also been exhausted. The result has been that the Oklahoma Natural has been required each year since and including the year 1917, to expend large sums in laying many miles of new pipe lines and in erecting additional compressor stations in order to get and furnish gas at all, while the amount of gas which it has been able to get and sell has steadily decreased each year, from 29 billion feet in 1917 to 20 billion feet in 1920. Since and including the year 1917, the Oklahoma Natural's additional investment in new lines and compressor stations has been about five and a quarter million dollars, which has approximately equalled its net earnings during that time.

Under the percentage contracts, however, the gas costs the local distributing companies nothing. Even the leakage in the local distributing companies' plants is suffered entirely by the Oklahoma Natural Gas Company. Their operating expenses are not increased one cent by the increased price which the Oklahoma Natural is required to pay for gas in the field, by the increase in the cost of producing the gas, by the increase in the cost of transporting it, and by the enormous increase in the Oklahoma Natural's investment.

It is obvious that a return that was adequate for the Oklahoma Natural when it was buying gas at \$100.00 for a gas well or at 2½ or 3¢ per thousand, and when the cost of producing gas was less than half what it is now, when the cost of transporting gas was less than half what it is now, and before the enormous new investment was required to be made, could not be adequate under these changed conditions. The result, as shown by the evidence, has been that since and including 1917, the Oklahoma Natural's net earnings each year, after paying its usual and ordinary expenses, and not counting its new investment as an expense, have just about equalled the amount it was required to expend in new lines in order to get and sell a constantly dwindling supply of gas. And as the fields to which they extend become exhausted, those lines, without  
118 having been amortized, become comparatively worthless except as junk, which entails a loss of the amount invested in them. This situation has already impaired the efficiency of the Oklahoma Natural's service, and it is leading to, and if continued, will inevitably end in early bankruptcy.

While the expenses and even the investments of the local distributing companies have been increased since the execution of the percentage contracts, yet the increase has not been at all proportionate to that of the Oklahoma Natural. And it is impossible for the Commission to fix a rate for gas that, under the conditions existing, and when apportioned under the percentage contracts, will give the Oklahoma Natural a living return without making that rate extortionately high to the public and giving to the local distributing companies an excessive return.

There is another matter that must be considered. The production and transmission property of the Oklahoma Natural Gas Com-

pany will become practically worthless, except for what it will bring as junk, when the natural gas is exhausted. This is not true, however, of the distributing plants. When natural gas is exhausted, the distributing plants can then be utilized for the sale of artificial gas in Oklahoma City, Muskogee, Enid, Shawnee, Wagoner, Guthrie and El Reno. It is therefore necessary that the Oklahoma Natural Gas Company should be allowed a return not only for interest or dividend upon the amount invested in the production and transmission property, but also for the purpose of amortizing the production and transmission property.

The Commission therefore finds that the so-called percentage contracts in their relation to and effect upon the Oklahoma Natural Gas Company are unconscionable and oppressive, and have the effect of impairing the ability of the Oklahoma Natural Gas Company to discharge adequately and efficiently its duty to the public, and that if the same should be continued in effect the ultimate result would be to render the Oklahoma Natural Gas Company unable to serve at all.

2. The Commission further finds that the continuance in effect of said alleged percentage contracts is detrimental to the public interest, for the reason that under said percentage contracts the local distributing companies suffer none of the loss caused by the leakage of gas in their plants, and therefore they have no incentive to undertake to keep their plants tight and curtail the leakage therein. Under the percentage contracts all the gas is delivered into the distributing company's plant by the Oklahoma Natural Gas Company, and the distributing company furnishes the gas to its customers, collecting therefor, and paying to the Oklahoma Natural two-thirds of the collections made for domestic gas and three-fourths of the collections made for industrial gas. The gas which leaks out of the distributing plant and is not furnished to any consumer, of course is not collected for, and is not accounted for, and the entire loss falls upon the Oklahoma Natural Gas Company. The evidence shows that during the year 1920 the leakage in the distributing plants in El Reno, Enid, Guthrie, Muskogee, Oklahoma City, Shawnee and Wagoner totaled 1,800,196,000 cubic feet. The evidence shows that the leakage in the El Reno plant during the year 1920 was 19.5% of the total amount of gas furnished that plant by the Oklahoma Natural; the leakage in the Enid plant was 1.71% of the total amount furnished by the Oklahoma Natural; the leakage in the Guthrie plant was 21.12% of the total amount of gas furnished that plant by the Oklahoma Natural; the leakage in the Muskogee plant was 28.78% of the total amount of gas furnished that plant by the Oklahoma Natural; the leakage in the Oklahoma City plant was 15.31% of the gas furnished that plant by the Oklahoma Natural; the leakage in the Shawnee plant was 22.5% of the total amount of gas furnished that plant by the Oklahoma Natural; and the leakage in the Wagoner plant was 49.93% of the total amount of gas furnished that plant by the Oklahoma Natural. This situation has existed for some years; it has been complained of time after time, and has not been remedied; and the Commission

conceives that the most effective method of bringing about a remedy of that situation is to require each distributing plant to purchase its gas at the city gates and require it to stand the loss of its own leakage. Then, and not until then, will effective means be taken to curtail the leakage. This loss through leakage is a great economic loss of a valuable natural resource which can never be replaced. The leakage in the plants above named aggregated more than five times the total amount of gas used during the year 1920 in either the City of El Reno or in the City of Guthrie. It was 500,000,000 cubic feet larger than the total amount of gas used for the year 1920 in the City of Muskogee. It was one-fourth of the total amount of gas used during the year 1920 in Oklahoma City. It was four times the amount of gas used during the year 1920 in Shawnee, and was twenty times the amount of gas used during the year 1920 in the City of Wagoner. This leakage averages about twenty times the amount allowed by recognized standards. If the leakage could be brought to a recognized standard so that practically all the gas that is delivered into the distribution systems could be furnished to the consumers, the shortages which we have had in past winters would be considerably lessened.

No figures have been presented as to the amount of waste of gas by leakage in distributing systems owned and operated by the Oklahoma Natural Gas Company. The Commission presumes that that would amount proportionately to as great an amount as the loss shown by the figures presented in the distribution systems who are supplied by the Oklahoma Natural Gas Company as a producing company. In considering the matter of leakage, the Commission will in no wise overlook the loss occasioned by such waste in the systems owned and operated by this company.

It is impossible to allocate any particular gas wells, compressor stations and pipe lines of the Oklahoma Natural Gas Company to any certain towns or cities, and for that reason it is practically impossible to fix the rates of each town and city upon the basis of the value of any special and particular property used and useful in serving that particular town and city. The gas wells, gas leases, pipe lines and compressor stations furnish gas to all the various towns and cities; and gas is put into the line at both ends of the system and at many and various places between. And under such circumstances the present conditions are unfair and unjust to the consumers in the towns and cities where the distributing plants are properly kept up, because it requires them to bear a portion of the loss caused by the leakage in other plants. Under a city gate rate, however, each distributing plant would purchase its gas at the city gates, and the rates in that city would then be fixed upon the basis of the value of the distributing company's property and the cost of gas to it at the city gates, and under those circumstances the consumers of each city would pay a rate based upon the conditions existing in its own particular distributing plant.

The Commission is given jurisdiction by Chapter 92, Session Laws 1913 "to prescribe rules, requirements and regulations affecting their services, operation, and the management and

conduct of the business" of public utilities; and in the exercise of that power conferred upon the Commission, the Commission conceives and believes that the furnishing of gas under the percentage contracts is injurious to the public and that that method of operating, managing and conducting the business should be changed, and that the business should be conducted upon a city gate basis.

3. The Commission also finds that said percentage contracts should be abrogated, because they interfere with the express power conferred upon the Commission by the Act approved March 25, 1913, to regulate the rates of public utilities. Thus, the Oklahoma Gas & Electric Company, for example, is a public utility, and the Corporation Commission has the power to prescribe the rate at which it shall furnish natural gas to its patrons. In determining that rate the Commission would consider the cost of the gas to the Oklahoma Gas & Electric Company, the amount of its operating expenses, the amount of its investment, and what a reasonable return thereon would be, and would endeavor to fix a rate which would give to the Oklahoma Gas & Electric Company a sum sufficient to pay its expenses and a reasonable return upon the value of its property used in rendering its services. The Oklahoma Natural Gas Company, however, is also a public service corporation, and the Commission has jurisdiction to fix its rates, and its rates are to be fixed upon the same basis. The object and purpose of the law is to require each public service corporation to perform its service efficiently, and to see to it that each public service corporation receives a reasonable return upon the value of its property used and useful, and that no higher rates are exacted from the public than are necessary to enable the public service corporations to pay their expenses and obtain a reasonable return upon the value of their property.

If, however, the Oklahoma Natural Gas Company and the Oklahoma Gas & Electric Company, for example, could enter into a contract with each other apportioning the price paid for gas in Oklahoma City between those two companies, and if the Commission has no power to require the gas to be furnished under a different arrangement, then the Commission is without power to fix the rates of one or the other of those companies. But the Act of 1913 confers upon the Commission the power to fix the rates of both of these companies, and the basis of rates, as held by the Supreme Court of Oklahoma in the recent case of Oklahoma City et al. vs. the Corporation Commission, No. 11998, is the expenses of each public utility and the value of its property. In the interest of the public, therefore, it is necessary that the rates of the Oklahoma Natural Gas Company be fixed upon the basis of its expenses and the value of its property, and it is also necessary that the rates of each distributing plant be fixed upon the basis of their expenses and the value of their properties. And the Corporation Commission cannot fully and properly exercise the power and perform the duties prescribed by the Act of 1913 if the present arrangements be continued. This same question was passed upon by Judge Booth, sitting in the United States District Court for the District of Kansas on November 17, 1920, in the case of Landon, Receiver of the Kansas Natural Gas

Company, v. the Court of Industrial Relations of the State of Kansas, 269 Fed. 423, in which the court said in the fourth syllabus:

121 "The rate contracts of public utilities are subject to legislative supervision and abrogation, except where the renunciation of such right of the state is evidenced by the most clear and unequivocal terms, so that contracts fixing the rates to be paid by natural gas distributing companies to the supply company were abrogated by Laws Kan. 1911, c. 238, Section 30, and by the orders of the Public Utilities Commission and of the Court of Industrial Relations of that State, establishing different rates."

The National Committee on Natural Gas Conservation, appointed by Franklin K. Lane as Secretary of the Interior for the purpose of studying and surveying the natural gas situation and making recommendations for the purpose of ameliorating the acute situation caused by the shortage of natural gas, in its report, found and stated that the contracts between transportation and distribution companies whereby the transportation company suffered the loss caused by leakage was a potent factor in the waste of natural gas, and that a flat price at the town border point of delivery would do much toward eliminating waste and leakage, and was preferable.

For the reasons hereinbefore stated the Commission finds that the present arrangements whereby gas is furnished to the local distributing companies above named by the Oklahoma Natural Gas Company for a certain percentage of the amount collected by the distributing companies are unconscionable, burdensome and oppressive to the Oklahoma Natural Gas Company and impair its ability to serve the public efficiently, and tend to reduce it to a condition in which it cannot serve at all; that said arrangements are conducive to waste and loss of gas which not only constitute an economic loss of a valuable resource, but which also reacts unfavorably on the public in the matter of the supply and in the matter of price of the commodity; and that for said reasons the Commission finds that said arrangements should be abrogated and discontinued, and the Commission hereby directs the abrogation and discontinuance of said arrangements, and directs that each distributing plant, including both those owned by the Oklahoma Natural Gas Company itself, and those owned by other independent corporations, shall purchase their natural gas at the city gates, and shall pay therefor the price hereinafter prescribed.

4. The Commission further finds that said alleged percentage contracts have a direct, oppressive and burdensome effect upon the Oklahoma Natural Gas Company in its relations with and service to Tulsa, Sapulpa, Chandler and the other towns and cities, and their inhabitants, which the Oklahoma Natural Gas Company serves directly; and they also have an oppressive and burdensome effect upon said towns and cities themselves and their inhabitants, for the following reasons:

A large proportion of the gas furnished by the Oklahoma Natural Gas Company to the local distributing companies in Oklahoma City, El Reno, Yukon, Enid, Guthrie, Shawnee, and Muskogee, under said alleged percentage contracts, comes from the same gas leases and gas wells, through the same compressor stations and pipe lines which serve Tulsa, Sapulpa, Chandler, and the other towns and cities which the Oklahoma Natural serves directly. They are all served with the same investment and the same facilities. In times of shortage the local distributing companies in the so-called agency towns are getting and using gas which the towns and cities served directly by the Oklahoma Natural need. In addition to that, every foot of natural gas supplied to the distributing companies in the so-called agency towns, depletes the gas fields by that much, necessitates increases in the Oklahoma Natural's capital investment in building new lines to new fields, on which new capital invested, the towns and cities served directly by the Oklahoma Natural must pay a return; and hastens the ultimate entire exhaustion of gas and the end of natural gas service to the towns and cities served by the Oklahoma Natural directly.

The Corporation Commission has power and jurisdiction to fix the rates to be paid to the Oklahoma Natural by the users of gas in the towns and cities served directly by it, and under the evidence in this case, the rates in most of those towns and cities will have to be increased. But under the recent decision of the Supreme Court of Oklahoma, the Commission has no power or jurisdiction to increase the rates to consumers in the so-called agency towns upon an application of the Oklahoma Natural Gas Company therefor, but only upon application of the local distributing companies operating therein; and the Oklahoma Natural has no power to require the local distributing companies to apply for or obtain such increases. The result would be that, although most of the agency towns are somewhat more distant from the sources of supply than are the towns and cities served directly by the Oklahoma Natural, nevertheless they would be getting their gas more cheaply than the towns and cities served directly by the Oklahoma Natural, and a discrimination against these towns and cities prohibited by the Constitution and statutes of this State would result.

Should the local distributing companies file applications for increases in their rates, it is uncertain whether the value of the Oklahoma Natural's property and the extent of its necessities could be considered in fixing the local distributing companies' rates; but even if the Oklahoma Natural and the local distributing companies could and should join in an application for an increase in rates, and if the values of both properties used and useful in serving the public, and the expenses of both companies should be considered in fixing those rates, nevertheless, if the so-called percentage contracts governed, the rates fixed would not be apportioned between the local distributing companies and the Oklahoma Natural in the ratio of their respective investments, expenses and requirements, but arbitrarily by the provisions of the alleged contracts, giving, as the Commission finds, an undue proportion to the local distributing com-

panies, and necessitating the fixing of higher rates than the distributing companies are entitled to in order that the Oklahoma Natural might have an adequate rate.

The effect of that condition and situation is oppressive, burdensome and injurious, not only to the Oklahoma Natural Gas Company, but also to the people in the towns and cities served directly by that company.

All these local distributing companies are patrons or customers of the Oklahoma Natural Gas Company, and have been so all the time. The fact that they resell the gas purchased from the Oklahoma Natural, and that they purchase large quantities, makes them none the less patrons of that public service corporation; and the relations between them, the rates at which the service shall be rendered by one to the other, is subject to be regulated, fixed and prescribed by the State acting through this Commission.

123 Salisbury & S. R. Co. v. Southern Power Co. (N. C.), 101 S. E. 593.

For the reasons hereinbefore stated the Commission finds that the present arrangements whereby gas is furnished to the local distributing companies above named by the Oklahoma Natural Gas Company for a certain percentage of the amount collected by the distributing companies are unconscionable, burdensome and oppressive to the Oklahoma Natural Gas Company and impair its ability to serve the public efficiently, and tend to reduce it to a condition in which it cannot serve at all; that said arrangements are conducive to waste and loss of gas, which not only constitute an economic loss of a valuable resource, but which also reacts unfavorably on the public in the matter of the supply and in the matter of price of the commodity; and that said contracts oppressively and burdensomely affect the towns and cities and their inhabitants which the Oklahoma Natural serves directly; and that for said reasons the Commission finds that said arrangements should be abrogated and discontinued, and the Commission hereby directs the abrogation and discontinuance of said arrangements, and directs that each distributing plant, including both those owned by the Oklahoma Natural Gas Company itself, and those owned by other independent corporations, excepting, however, Claremore, Inola and Ramona, shall purchase their natural gas at the city gates, and shall pay therefor the price hereinafter prescribed.

#### The City Gate Rate.

The determining elements of the rate, of course, are the value of the property used and useful in the business, the amount of the operating and maintenance expenses, the estimated life of the property, and the amount of gas sold. In fixing the city gate rate the value of the Oklahoma Natural Gas Company's distributing plants, as well as the expense of their operation, will, of course, be excluded. Only the value and expenses of the property of the Oklahoma Natural used and useful in producing and transporting the gas to the city gates will be included. The question as to what value is to

considered in fixing the rates, that is whether a return should be upon original cost or present reproduction value less depreciation, always arises, and has been discussed at considerable length in this case.

In *San Diego Land Co. v. National City*, 174 U. S. 739, the Supreme Court of the United States, speaking through Justice Harlan, said:

"The basis of calculation suggested by the appellant is, however, effective in not requiring the real value of the property and the fair value in themselves of the services rendered to be taken into consideration. What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property at the time it is being used for the public. The property may have cost more than it ought to have cost, and  
124 its outstanding bonds for money borrowed and which went into the plant may be in excess of the real value of the property. So that it cannot be said that the amount of such bonds should in every case control the question of rates, although it may be an element in the inquiry as to what is, all the circumstances considered, just both to the company and to the public."

In *Pioneer Telephone & Telegraph Co. v. Westenhaver*, 29 Okla. 429, the Supreme Court of Oklahoma said:

"The rate is fair when its application will yield a fair return upon the reasonable value of the property at the time it is being used for the public. It is unfair when it does not yield such a return, *Knoxville v. Knoxville Water Co.*, 212 U. S. 1, 29 Sup. Ct. 148, 53 L. Ed. 371; *San Diego Land & Town Co. v. Jasper*, 189 U. S. 439, 23 Sup. Ct. 571, 47 L. Ed. 892; *San Diego Land & Town Co. v. National City*, 174 U. S. 739, 19 Sup. Ct. 804, 43 L. Ed. 1154; *Smyth v. Ames*, 169 U. S. 466, 18 Sup. Ct. 418, 42 L. Ed. 819. No inflexible method for the ascertainment of the value of the property used in the service has been fixed by legislative bodies dealing with rates, or by the courts in determining the validity of rates, and from the nature of the subject no inflexible method can be fixed. Sometimes the present value is arrived at by ascertaining the original cost of construction and all betterments, and deducting therefrom for depreciation; but this method does not always prove to be fair and just. If there was extravagance and unnecessary waste in the construction, or, as is often the case, fictitious stocks and bonds issued, the proceeds of which did not go into the original construction, such method would prove unfair to the public. On the other hand, where the market price of the physical units or of the labor entering into the construction of the plant has advanced since its construction, the original cost may be much lower than the present value, and for that reason be to the owner of the plant an unfair determination of its present value."

The true rule deduced from a consideration of all the authorities seems to be that the value of the property for rate making purposes

is the reasonable fair value of the property as the same exists at the time the inquiry is made; and that in determining the present fair value of the property neither original cost nor reproduction cost new, considered separately, are determinative, but that consideration must be given both to original cost and present reproduction cost less depreciation, together with all the other facts and circumstances which would have a bearing upon the value of the property, and from a consideration of all these a fair present value is to be determined.

125 The property in question was appraised by H. E. Musson for the Oklahoma Natural Gas Company, and by M. E. Durham, then appraisal engineer of the Corporation Commission, for the public. Mr. Musson made his appraisal upon two bases; one original cost, and the other reproduction cost new. Mr. Musson found the original cost of the Oklahoma Natural Gas Company's entire property, including its distribution plants, up to October 31, 1919, to be \$16,061,960.00. Mr. J. M. Gayle, of the firm of Musson & Gayle, made an audit of the vouchers of the Oklahoma Natural Gas Company up to October 31, 1919, and he found that the original cost of the property of the Oklahoma Natural Gas Company, including its distributing systems, up to October 31, 1919, was \$16,190,382.40. Mr. Durham completed his inventory as of September 30, 1919, and he found the original cost of only the physical property of the Oklahoma Natural Gas Company to be \$13,153,651.39. Mr. Durham testified, however, that he omitted all overheads, such as cost of organization, engineering and superintendence, law expenditures during construction, and interest during construction, and that he omitted the entire labor item upon the Oklahoma Natural Gas Company's pipe line running from Cement to Walters, a 16-inch line fifty-five miles long. Mr. Durham testified that the overheads mentioned were proper charges to be considered, and that if he had put those in his appraisal and had included the labor item on the pipe line from Cement to Walters, there would have been little, if any, difference between his appraisal and Mr. Musson's. Mr. Durham was directed by the Commission only to make an appraisal of the actual physical property of the Oklahoma Natural, and it was for that reason that he omitted the overheads. He omitted the labor items on the pipe line from Cement to Walters because the figures had not been completed and were not available at the time he finished his inventory.

Mr. Musson's inventory and appraisal of the entire property on the basis of reproduction new without depreciation, up to October 31, 1919, was \$33,023,258.94. Mr. Durham testified that the value of the property on the basis of reproduction new would be 70% greater than on the basis of original cost. Mr. Musson also made an appraisal and inventory of the production and transmission system of the Oklahoma Natural, separate and apart from the distributing systems. He found the value of the production and transmission system, including the Enid system, but excluding Claremore, Ramona and Inola, and excluding all distributing systems, on the original cost basis up to and including October 31, 1919, to be \$13,534,999.70, without depreciation; and he found the value of the same property on the basis of reproduction cost to be \$29,-

023,058.94. The following table entitled "Table I" will show the value of the production and transmission system of the Oklahoma Natural Gas Company, including the Enid system, and excluding Claremore, Ramona and Inola, and excluding all distribution systems, on the original cost basis, to-wit:

TABLE I.

## Oklahoma Natural Gas Company.

*Original Cost of Production and Transmission System, Including Enid System, but Excluding Claremore, Ramona, and Inola and Excluding All Distributing Systems.*

Musson's Ex. 1, Vol. 3 (to 10/31/19).....	\$13,534,699.70
Dalious Ex. 3 (From 10/31/19 to 5/31/20).....	37,754.76
Dalious Ex. 4.....	67,777.48
Dalious Ex. 5.....	727,346.92
Dalious Ex. 7.....	253,003.75

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\$14,620,582.61

## Less Claremore Prod. &amp; Trans. System:

Dalious Ex. 1.....	\$1,898.33
Dalious Ex. 2.....	262,910.01
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	264,808.34

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\$14,355,774.27

## Less Removals as follows:

Dalious Ex. 6.....	\$206,511.55
Dalious Ex. 8.....	302,240.24
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	508,751.79

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\$13,847,022.48

## Plus Additions since May 21, 1920, as follows:

On Enid Production System.....	4,034.40
" " Transmission ".....	31,800.00
" Main Line Prod. System.....	303,006.64
" " Trans. ".....	68,706.64
" Added Pipes and Fittings.....	274,309.70

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Total ..... \$14,528,879.86

In explanation of the foregoing table, Volume 3 of Musson's Exhibit I shows the original cost of the production and transmission system, including the Enid System, but excluding Claremore, Ramona and Inola, to have been \$13,534,699.70. Dalious' Exhibits 3, 4, 5 and 7 show additions to the property from October 31, 1919, to May 31, 1920, making a total value of \$14,620,-

582.61. From that is deducted the figures shown in Dalious' Exhibits 1 and 2, which were the additions to the Claremore production and transmission system; and also the figures shown in Dalious' Exhibits 6 and 8 which were removals from the main line system, and which left a total value as of May 31, 1920, on the original cost basis, of \$13,847,022.48. To that was added the additions made since May 31, 1920, as testified to, which made a total original cost of the production and transmission system, excluding Claremore, Ramona and Inola, of \$14,528,879.86. All of the evidence was to the effect that the production and transmission property was of this value, and there was no evidence whatsoever to the contrary.

The very least that the Commission could take as the value of the property for rate making purposes would be its original cost. If effect also be given to reproduction cost new, then the value for rate making purposes would be several million dollars larger than the values shown in Table I above. If the original cost be taken as the value for rate making purposes, then it would seem that that value ought not to be depreciated. In other words, if the company is to be denied in valuations for rate making purposes the benefit of the increase in the value of its property, that is to say, if it is to be denied appreciation, then it ought not to be charged with depreciation. All of the evidence in regard to the depreciation was that it amounted to 18%; and in any event, if the Commission is to give any effect whatsoever to the testimony in regard to the reproduction value of the property, the increase in the value of the property as represented by its reproduction cost is much more than sufficient to offset the depreciation. For present purposes, therefore, the Commission will take as the value of the production and transmission system of the Oklahoma Natural Gas Company, including the general system and the Enid system, but excluding Claremore, Ramona, and Inola, the sum of \$14,528,879.86.

The next matter to be determined is the production and transmission expense. At the time the case was closed the production and transmission expense was put in for the year ending May 31, 1920, and is graphically shown by the following table, entitled "Table II," to-wit:

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TABLE II.

## Oklahoma Natural Gas Company.

*Production and Transmission Expense for Year Ending May 31, 1920, Enid System Included, but Excluding Claremore, Inola, and Ramona.*

Total Production and Transmission Expenses and Taxes for year ending May 31, 1920, (Dal. Ex. 17, p. 2) General system, excluding Claremore, Inola and Ramona.....	\$2,952,137.21
Enid System.....	164,075.80
Total .....	\$3,116,213.01

## Less gas purchased:

General system (Dal. Ex. 17, p. 2).	\$1,192,018.48	
Enid system ( " " " " )	66,250.78	
		<u>\$1,258,269.26</u>
Other Expenses.....		\$1,857,943.75
\$1,258,269.26 paid for gas $\div .06 = 20,971,154$ M		
ft. 20,971,154 at 10¢ per M = cost of gas at 10¢		<u>\$2,097,115.40</u>
Total Expense.....		\$3,955,059.15

These expenses were shown by Dalious' Exhibit 17, Mr. Dalious being the auditor of the Oklahoma Natural Gas Company, and were testified to by him as being correct. The total shown on this table is \$3,116,213.01, including the cost of gas purchased, which amounted to \$1,258,269.26, leaving as the expenses exclusive of gas purchased \$1,857,943.75. All of the gas purchased that year except a portion of the gas purchased during the month of May, was purchased at 6 cents per thousand. The company therefore purchased 20,971,154 M cubic feet. But it now pays ten cents a thousand for all of the gas which it purchases. That quantity of gas, therefore, would now cost it \$2,097,115.40, and would make the total expense for a year equal \$3,955,059.15.

The next question is what the production and transmission system, excluding Claremore, Ramona and Inola, should earn, and assuming the contention to be correct that a natural gas producing and transporting company, because of the uncertainty and hazards of the business, is entitled to a return of ten per cent, and that an additional ten per cent is a reasonable charge for depreciation and amortization, what the company should earn is shown by Table III as follows:

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TABLE III.

## Oklahoma Natural Gas Company.

*What Production and Transmission System, Including Enid System, but Excluding Claremore, Ramona, and Inola, Should Earn.*

Value (Table I) .....	\$14,528,879.86
Plus—Going Concern Value 10%.....	1,452,887.99
Plus—Working Capital (1½ mo. exp. Table II)	<u>494,382.39</u>
Total value .....	\$16,476,150.24

10% for return .....	1,647,615.02
10% for depreciation and amortization.....	1,647,615.02
	<hr/>
	\$3,295,230.04
Plus—Expenses (Table II) .....	3,955,059.15
	<hr/>
Total to Earn.....	\$7,250,289.19
Less—Revenue from (Daliou's Ex. 16):	
Field Gas .....	\$155,708.12
Drilling Gas .....	814,715.19
	<hr/>
	\$970,423.31
	<hr/>
Amount to be earned from Enid System and towns and cities on general system.....	\$6,279,865.88

In the foregoing table the valuation taken is the original cost without depreciation, as shown in Table I. To that is added 10% for going concern value. In this connection it is proper to state that all of the witnesses who testified on the subject testified that the going concern value of the Oklahoma Natural Gas Company was 15%, and there was no evidence to the contrary. The Commission however in the foregoing table has allowed only 10% for going concern value. To that also is added working capital, which is the company's expenses for 1½ months, being 3/24 of the total expense as shown on Table II. This represents the money which the company is required to keep on hand in order to pay its salaries and wages to its employees and to pay for gas purchased and to pay for machinery and tools and stock carried in the warehouse. This makes a total value for rate making purposes of \$16,476,150.24.

All of the witnesses who testified on the subject testified that depreciation and amortization would run from 12 to 15 per cent. Allowing however 10% for dividends or interest on the investment, and only 10% for depreciation and amortization together, of which about 3% would be for depreciation and 7% for amortization, and which would assume the life of the business to be fourteen years, and considering the expenses shown in Table II, the Oklahoma Natural Gas Company would be required to earn \$7,250,289.19 each year. Of this amount it earned, as shown by Daliou's Exhibit 16, testified to by him to be correct, \$970,423.31 from the sale of field gas and drilling gas, which would leave the sum of \$6,279,865.88 to be earned from the towns and cities on the Enid system and on the general system.

From the foregoing it is easy to calculate what a city gate rate should be, and the same is shown in the following Table IV, to-wit:

TABLE IV.

## Oklahoma Natural Gas Company.

*What City Gate Rate Should Be In Town and Cities on Enid System and General System.*

Total amount of gas sold during year (Daliou's Exhibit 16) .....	20,289,294 M ft.
Field Gas .....	936,388
Drilling Gas .....	4,398,374
Claremore .....	235,968
Ramona .....	33,945
Inola .....	12,603
	<hr/> 5,617,278 M ft.

Amount sold in towns and cities on Enid System and general system..... 14,672,016 M ft.

\$6,279,865.88, amount to be earned from towns and cities on Enid and General Systems (Table III), divided by 14,672,016 M ft., amount sold in said towns and cities, equals 42.1¢ per M.

Referring to the above table the item of 20,289,294 M feet was the total amount of gas sold by the Oklahoma Natural Gas Company for the year ending May 31, 1920. Of that 5,617,278 M feet were sold for field gas, drilling gas, and in the towns of Claremore, Ramona and Inola, which left 14,672,016 M feet as the amount that was sold in the towns and cities on the general system and on the Enid system. At a city gate rate the Oklahoma Natural Gas Company would of course receive pay for the amount of gas which it delivers into the distributing system of the local distributing companies, whereas under existing arrangements it receives pay only for that portion which it delivers which the local distributing companies sell and which does not leak out. It is to be assumed however that the local distributing companies, when they are required to buy the gas at the city gates and pay for all the gas they buy, will reduce their leakage to a minimum, and will eliminate the large leakage which now exists, and that the local distributing companies will buy from the Oklahoma Natural Gas Company 131 and pay for only a slightly larger quantity of gas than they actually sell. In any event, eliminating from Table IV all consideration of leakage, we have, as shown by Table III, \$6,279,865.88 to be earned by the sale of 14,672,016 M cubic feet of natural gas at the city gates, which would require a city gate rate of 42.1 cents per thousand.

If we assume that the local distributing companies will not correct their leakage, then we would add to the 14,672,016 M feet of gas sold in said towns and cities, an additional 1,800,196 M of gas which leaked from the plants of these distributing companies, and

which would make 16,472,212 M cubic feet of gas which the Oklahoma Natural would sell in those towns and cities, and which make a city gate rate slightly in excess of 38 cents per M. The following Table V shows what the city gate rate would be on the same valuation, but allowing only 8% for return and 10% for depreciation and amortization, and eliminating from consideration the matter of leakage:

TABLE V.

## Oklahoma Natural Gas Company.

*What Production and Transmission System, Including Enid System, but Excluding Claremore, Ramona, and Inola, Should Earn, Allowing only 8% Return, and City Gate Rate Necessary to Earn It.*

Value (Table I) .....	\$14,528,879.86
Plus—Going Concern Value 10% .....	1,452,887.99
Plus—Working Capital (1½ mo. exp.) .....	494,382.39
<b>Total Value .....</b>	<b>\$16,476,150.24</b>
8% return .....	\$1,318,092.02
10% for depreciation and amortization .....	1,647,615.02
	<b>\$2,965,707.04</b>
Plus—Expenses (Table II) .....	3,955,059.15
<b>Total to Earn .....</b>	<b>\$6,920,766.19</b>
Less Revenue from Field Gas and Drilling Gas, (Same as in Table III) .....	970,423.31
<b>Amount to be earned from Enid System and towns and cities on general system....</b>	<b>\$5,950,342.88</b>

$$\$5,950,342.88 \div 14,672,016 \text{ M ft.} = 40.5\text{¢ per M.}$$

132 The following Table VI shows what the city gate rate would be allowing only 8% for return and 8% for depreciation and amortization, and eliminating all consideration of leakage.

TABLE VI.

## Oklahoma Natural Gas Company.

*What Production and Transmission System, Including Enid System, but Excluding Claremore, Ramona, and Inola, Should Earn, Allowing Only 8% Return and 8% for Depreciation and Amortization and City Gate Rate Necessary to Earn It.*

Value (Table I).....	\$14,528,879.86
Plus—Going Concern Value, 10%.....	1,452,887.99
Plus—Working Capital (1½ mo. exp.).....	494,382.39
<b>Total Value.....</b>	<b>\$16,476,150.24</b>
8% for return.....	1,318,092.02
8% for depreciation and amortization.....	1,318,092.02
	<b>\$2,636,184.04</b>
Plus Expenses (Table II).....	3,955,059.15
<b>Total to Earn.....</b>	<b>\$6,591,243.19</b>
Less Revenue from Field Gas and Drilling Gas (Same as in Table III).....	970,423.31
<b>Amount to be earned from towns and cities on Enid System and General System....</b>	<b>\$5,620,819.88</b>
<b>\$5,620,819.88 ÷ 14,672,016 M. ft. = 38.3¢ per M.</b>	

133 The following Table VII shows what the city gate rate must be after depreciating the original cost of the Oklahoma Natural Gas Company's property 18% and allowing only 8% for return and 8% for depreciation and amortization, and making no allowance for leakage. That city gate rate is 35.2 cents per M.

TABLE VII.

## Oklahoma Natural Gas Company.

*What Production and Transmission System, Including Enid System, but Excluding Claremore, Ramona and Inola, Should Earn on Depreciated Original Cost, Allowing only 8% for Return and 8% for Depreciation and Amortization, and City Gate Rate Necessary to Earn It.*

Value (Table I) .....	\$14,528,879.86
Less Depreciation, 18% .....	2,615,198.37
	<hr/>
	\$11,913,681.49
Plus Going Concern Value, 10% .....	1,191,368.15
Plus Working Capital (1½ mo. exp) .....	494,383.39
	<hr/>
Total Value .....	\$13,599,432.03
8% for return .....	1,087,954.56
8% for depreciation and amortization .....	1,087,954.56
	<hr/>
	\$2,175,909.12
Plus Expense (Table II) .....	3,955,059.15
	<hr/>
Total to Earn .....	\$6,130,968.27
Less Revenue from Field & Drilling Gas, (Same as in Table III) .....	970,423.31
	<hr/>
	\$5,160,544.96

\$5,160,544.96 ÷ 14,672,016 M ft. = 35.2¢ per M.

The following Table VIII shows the production and transmission expense of the Oklahoma Natural on its entire system, including Claremore, Ramona and Inola, for the year ending December 31, 1920, which amounts to \$3,555,533.44:

TABLE VIII.

## Oklahoma Natural Gas Company.

Year Ending Dec. 31, 1920.

*Production and Transmission Expenses for Year Ending December 31, 1920, on Entire System.*

Production Expense (Daliou Ex. 20, Sched. 1) ....	\$1,448,542.31
Transmission Exp. ( " " " " " ) ....	546,311.22
Gas Purchased ( " " " " " ) ....	1,560,679.91
	<hr/>
Total .....	\$3,555,533.44

NOTE.—As to gas purchased, until April 15, 1920, the Oklahoma Natural paid only 6¢ per M for gas. From April 15, 1920, it paid 10¢ per M for the gas which it purchased from Creek County Gas Company and Cushing Pipe Line Co. From Oct. 1, 1920, it has paid 10¢ per M for all gas purchased.

Total Sales of gas were 20,030,786 M ft. (Dal. Ex. 21).

Leakage in El Reno.....	81,421 M ft. (Dal. Ex. 21).
“ “ Enid .....	16,204 “ “ “ “ “
“ “ Guthrie .....	110,308 “ “ “ “ “
“ “ Muskogee .....	612,179 “ “ “ “ “
“ “ Okla. City .....	747,446 “ “ “ “ “
“ “ Shawnee .....	139,921 “ “ “ “ “
“ “ Wagoner .....	92,717 “ “ “ “ “

Total Leakage in Agency towns..... 1,800,196 M ft.

In explanation of the foregoing it is proper to state that from January 1, 1920, until April 15, 1920, the Oklahoma Natural Gas Company paid only six cents a thousand for all the gas which it purchased. From April 15, 1920, until October 1, 1920, it paid only six cents a thousand for all gas which it purchased except a quantity which it purchased from the Creek County Gas Company and the Cushing Pipe Line Company for which it paid ten cents. From October 1, 1920, until the end of the year it paid ten cents per M for all gas purchased.

135 Table IX shows what the Oklahoma Natural Gas Company would receive at a city gate rate of 30 cents per M cubic feet, assuming that none of the agency towns corrected their leakage situation; that is to say, assuming that there was the same demand for gas as heretofore and the same supply as heretofore, and that the agency towns permitted the same quantity of gas to leak in their systems as heretofore, and that the Oklahoma Natural Gas Company received 30 cents a thousand for all the gas. It is to be noticed that the drilling gas for the year ending December 31, 1920, amounts to more than the drilling gas for the year ending May 31, 1920.

TABLE IX.

## Oklahoma Natural Gas Company.

*Entire System.*

Total Amount of Gas sold in 1920.....	20,030,786 M ft.
Drilling Gas .....	5,590,875 (Dal. Ex. 21.)
Field (Wholesale Gas) .....	751,788
	<hr/> 6,342,663
Domestic and industrial gas sold.....	13,688,123 M ft.
Plus leakage in Agency towns.....	1,800,196 M ft.
	<hr/> Total to be paid for..... 15,488,319 M ft.
	<hr/> 30
	<hr/> \$4,646,495.70
Plus Drilling Gas—Dal. Ex. 21.....	1,206,622.68
Plus Field Gas       “   “   “ .....	130,936.74
	<hr/> \$5,984,055.12

Compare with amounts to be earned.

136 The Commission does not rule that the Oklahoma Natural Gas Company is restricted to the original cost of its property as a rate basis. It does hold, however, that inasmuch as the reproduction cost new, less depreciation, is very much greater than the original cost, then the original cost is the smallest value upon which it could be contended that the rates should be fixed. Since the evidence was taken in this case there have been some slight reductions in the cost of pipe lines and compressor stations and in the cost of labor. The Commission finds that at the time this case was instituted, and at the time the evidence was introduced, the value of the production and transmission system of the Oklahoma Natural Gas Company, including the general system and the Enid system, and excluding Claremore, Ramona and Inola, was not less than \$14,528,-879.86, plus going concern value and working capital, and that the value of the property at this time is slightly less than that.

Since that time the price of oil has gone down so that fuel oil is now sold very cheaply in competition with gas.

During the time covered by the hearings in this cause, and since the closing of the case, the price of gas at the mouth of the well has unquestionably declined until at the present time gas can be purchased at least at one-third less cost to the company at the well than at the time of the hearings. The Commission has an independent knowledge of this fact and, in making the order herein, does not take as conclusive the testimony with reference to the price of gas to the Oklahoma Natural Gas Company shown by it to have been paid

as justifying the rate adduced by the tabulations presented at that time.

Upon a consideration of all the facts and circumstances, the Commission hereby establishes a city gate rate to be charged by the Oklahoma Natural Gas Company to every local distributing system to which it furnishes gas, and to be charged by the Oklahoma Natural Gas Company for gas at the city gates to each and every distributing system owned by the Oklahoma Natural Gas Company itself. Each and every distributing company which shall take gas from the Oklahoma Natural Gas Company, including both the Independent distributing companies and those owned by the Oklahoma Natural Gas Company itself, shall receive and accept gas from the Oklahoma Natural Gas Company at the borders or boundaries of each town and city, and shall pay for the full amount of gas measured into the distributing system at the borders or boundaries of each town and city.

It has heretofore been the policy of this Commission, based upon what seems to it to be sound business policy, to segregate and divorce field operations of gas companies in the State of Oklahoma from the distributing systems where the company is engaged in the business of both producing and distributing gas. In making this order it in no wise departs from that policy and orders the Oklahoma Natural Gas Company to keep its records with reference to field operations and production separate and distinct from the records and accounts of the distributing end of the business to the end that the Commission may at any time ascertain the relations which exist between the two departments of its business.

137 The said city gate rate is hereby fixed at the sum of twenty-five cents net per thousand cubic feet, to be measured at the borders or boundaries of each town and city; provided, however, that for the gas bought by the distributing companies and by them sold to patrons or customers using more than 500,000 cubic feet each month, the distributing companies shall pay to the Oklahoma Natural Gas Company only the sum of twenty cents net per thousand cubic feet for the gas used by each consumer of each distributing company in excess of 500,000 cubic feet per month. Each distributing company shall keep a true and correct record of the monthly consumption of gas of each of its patrons who uses more than 500,000 cubic feet in each month, and of the amount of gas in excess of 500,000 cubic feet used by each such patron in each month, to which records and all data sustaining the same the Oklahoma Natural Company, its auditors or other agents, shall have access for the purpose of examining and auditing the same. The amount of gas actually used by each patron over and above 500,000 cubic feet each month shall be paid for by each distributing company to the Oklahoma Natural Gas Company at the rate of twenty cents net per thousand cubic feet. All the remainder of the gas measured by the Oklahoma Natural Gas Company into the lines of the distributing companies shall be paid for by the distributing companies to the Oklahoma Natural Gas Company monthly at the rate of twenty-five cents net per thousand cubic feet. This reduction in the price of the gas furnished by the distributing companies to large users is made to enable the distributing companies

to make a lower rate for industrial gas; but there is no reduction as to the first 500,000 cubic feet purchased for each such user, the reduction being only on the quantity used by each such user in excess of the 500,000 cubic feet in one month.

All bills shall be payable to the Oklahoma Natural Gas Company by the distributing companies on or before the 15th day of the month following that in which the gas was used.

The foregoing shall apply to the incorporated town of Carney, which takes gas from the line of the Oklahoma Natural Gas Company; to the Midfield Gas Company, which owns the distributing system in Oilton; to the Southwestern Oklahoma Gas & Fuel Company, which owns the distributing systems in the cities of Duncan and Marlow, and shall be applicable in each city; to the Oklahoma Gas & Electric Company, which owns the distributing systems in the cities of Oklahoma City and El Reno and Enid, and in the towns of Yukon and Britton, and the same shall be applicable in each of such towns and cities; to the Muskogee Gas & Electric Company, which owns the distributing plant in the city of Muskogee; to the Commonwealth Public Service Company and its Receiver, which owns the distributing system in the City of Wagoner; to the Shawnee Gas & Electric Company, which owns the distributing plant in the city of Shawnee, and to the Guthrie Gas, Light, Fuel & Improvement Company, which owns the distributing plant in the City of Guthrie; and to any  
138 and all other distributing plants which may take gas from the Oklahoma Natural Gas Company, whether herein specifically named or not, and to their successors and assigns, as well as to the plants owned by the Oklahoma Natural Gas Company, except Claremore, Ramona and Inola, which will be heard separately.

**The Distribution Rates in the Towns and Cities Served Directly by the Oklahoma Natural Gas Company.**

The application of the Oklahoma Natural Gas Company also prayed that the Commission grant it an increase in the rates for gas in the towns and cities served directly by it, and evidence has been introduced as to what that rate should be, and it becomes the duty of the Commission also to pass upon that feature of the case.

The Commission finds the following facts with respect to the plants and the distributing expenses in the towns and cities served directly by the Oklahoma Natural Gas Company:

139 The Commission finds that the cost of the properties used and useful in supplying gas in the towns and cities served directly by the Oklahoma Natural Gas Company at December 31, 1920, including reasonable allowances for amortization, engineering, supervision, interest during construction, legal expenses, accounting, casualties, incidentals and every conceivable intangible expense, going concern value and working capital, to be as follows:

Arcadia .....	\$5,753.45
Chandler .....	59,724.26
Coweta .....	30,196.26
Depew .....	9,461.60
Davenport .....	10,262.18
Deer Creek .....	4,242.11
Edmond .....	51,185.46
Haskell .....	44,858.58
Hunter .....	9,852.32
Kellyville .....	8,099.33
Lamont .....	15,067.97
Luther .....	6,827.30
Midlothian .....	2,371.25
Meeker .....	9,140.68
Nardin .....	4,812.84
Peckham .....	5,035.00
Pond Creek .....	20,808.28
Porter .....	12,513.36
Sapulpa .....	260,534.19
Shamrock .....	20,846.90
Stroud .....	32,585.42
Dawson .....	} 1,411,446.46
Red Fork .....	
Turley .....	
Tulsa .....	
Wellston .....	11,963.74

The Commission further finds that in order to allow a rate of return of 8% and to create a fund for depreciation amounting to 5% and to enable the company to serve the public efficiently, it is necessary to establish the following schedule of rates:

	Domestic.	Industrial.
Arcadia .....	55¢	25¢
Chandler .....	55¢	25¢
Coweta .....	55¢	25¢
Depew .....	50¢	25¢
Davenport .....	55¢	25¢
Deer Creek .....	45¢	25¢
Edmond .....	50¢	25¢
Haskell .....	50¢	25¢
Hunter .....	50¢	25¢
Kellyville .....	50¢	25¢
Lamont .....	47¢	25¢
Luther .....	50¢	25¢
Midlothian .....	55¢	25¢
Meeker .....	45¢	25¢
Nardin .....	45¢	25¢
Peckham .....	55¢	25¢
Pond Creek .....	49¢	25¢
Porter .....	55¢	25¢

	Domestic.	Industrial.
Sapulpa .....	47¢	25¢
Shamrock .....	45¢	25¢
140 Stroud .....	55¢	25¢
Dawson .....	42¢—[62]*	25¢
Red Fork .....	42¢—[62]*	25¢
Turley .....	42¢—[62]*	25¢
Tulsa .....	42¢—[62]*	25¢
Wellston .....	52¢	25¢

The rate for industrial gas shall not be available for quantities less than 500,000 cubic feet used by one consumer during one month, that is the minimum charge for industrial gas shall be 500,000 cubic feet at the domestic rate. These are cash rates contingent upon the payment of bills therefor on or before the tenth day after rendition. On any bills not so paid an additional charge of 2¢ per M cubic feet will be made.

This order and the rates and charges therein contained to be in full force and effect from and after the first day of July, 1921.

Under the decision of the Supreme Court of Oklahoma, the Commission has no power or jurisdiction to fix the rates of the independent local distributing companies under this application of the Oklahoma Natural Gas Company. If the present rates of the local independent distributing companies are insufficient, they may apply to the Commission for whatever relief they are entitled to.

The business of producing and transporting natural gas for public uses and purposes on the scale on which that business is carried on by the Oklahoma Natural Gas Company is essentially different from the business of distributing gas in towns and cities, and there is a question in the Commission's mind as to whether the mingling of those two businesses by the Oklahoma Natural Gas Company is conducive to the maintenance of the highest efficiency in either business; and the Commission would recommend that if the Oklahoma Natural Gas Company should find it possible to dispose of its distribution plants at reasonable prices, and divorce itself from the distribution business, and confine itself to the business of producing and transporting gas for public uses and purposes, that it do so as the opportunities for disposition of the distribution plants at reasonable prices may arise.

Done at Oklahoma City, Oklahoma, on this, the 25th day of June, 1921.

[SEAL.]

(Signed)

(Signed)

CORPORATION COMMISSION OF  
OKLAHOMA,  
CAMPBELL RUSSELL,  
*Chairman.*  
ART. L. WALKER,  
*Commissioner.*

Attest:

(Signed) P. E. GLENN,  
*Acting Secretary.*

[\*In pencil in copy.]

It is my view of the matters in controversy in this application that there no doubt exists an enormous amount of waste by leakage by the distributing companies who take their gas from the Oklahoma Natural Gas Company in the various towns served in the State of Oklahoma. Whether or not this leakage justifies the disarrangement of the entire system of gas rates now in effect in the State in the towns served by the Oklahoma Natural Gas Company, is a question of vital importance.

It is my opinion that the gate rate method of furnishing gas to distributing companies within the State of Oklahoma, or in any other State, from the standpoint of principle and as an original proposition, would be a wise policy. However, the question as to whether or not at this time, taking into consideration the extraordinary conditions which have existed within the past two or three years and which partially, at least, exist at the present time with reference to the cost of installation of gas properties and the necessity which, it appears to me, will exist in case a gate rate is fixed, for the re-laying and rehabilitation of the various plants in question at the cost of thousands of dollars, which must be passed on to the gas users inevitably, is a matter upon which I have grave doubts.

The people of the State of Oklahoma who use gas for the various purposes for which it is permissible to use it are in no condition, either temperamentally or financially, to suffer another increase in the price of gas delivered to them at the burner tip. It is my fear and my belief that if a gate rate is fixed in the case now before the Commission that immediately the various distributing plants operating within the State of Oklahoma, if required to remedy, even though slightly, the defects in their systems, will find this a very good excuse to justify them in applying to this Commission for a raise in their prices for gas sold and delivered in the various communities served by them. This does not mean that it is my opinion that they would be so justified or that an increase in such cases could be shown to be necessary; but I do mean to say that it would afford such an opportunity and such an excuse for making application for an advance in rates over the rate now charged, and it forces me to the conclusion that it might be better, if necessary to make an increase in rate at all to the parties interested herein, to-wit, the Oklahoma Natural Gas Company, to make it by some other method than by the city gate rate method. Such a policy might be pursued and a further investigation of the leakage, which now is known to exist to a marked extent, could be made and at a later time, if found necessary as a result of such investigation, a city gate rate could then be put into effect. This, too, would have the advantage of permitting conditions to return to a more normal basis from the standpoint of making investments in gas distributing systems and would perhaps result in a saving in such investments which would in a way at least off-set the loss of gas by leakage.

142 It is my further opinion that, if this Commission sets aside the existing contracts between the Oklahoma Natural Gas Company and the different distributing companies, it will afford the Oklahoma Natural Gas Company an opportunity to go to the Federal Courts and secure rates for gas furnished that are not justified under present conditions and under the terms of the present contracts.

For these reasons, as well as for many others, which might be stated if time permitted, it is my opinion that the adoption of the city gate rate for the Oklahoma Natural Gas Company at this time for gas furnished and delivered to the distributing systems by it is an unwise policy to pursue.

(Signed)

E. R. HUGHES,  
*Commissioner.*

143 Endorsed: Filed in District Court on January 21, 1922.  
Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

144 In the District Court of the United States for the Western  
District of Oklahoma.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and S. P. Freeling, Attorney General of Oklahoma, and The City of Tulsa, a Municipal Corporation, and Frank E. Duncan, its City Attorney, and The City of Capula, a Municipal Corporation, and Leroy J. Burt, its City Attorney, and The City of Claremore, a Municipal Corporation, and P. W. Holtzendorff, its City Attorney, Defendants.

*Motion to Dismiss Bill of Complaint.*

Come now the City of Tulsa and Frank E. Duncan, City attorney of the City of Tulsa, two of the above named Defendants and move the Court to Dismiss the Plaintiff's Bill of Complaint as to said Defendants, for the following reasons, to-wit:

1st. The Bill of Complaint does not state facts sufficient to constitute a cause of action in favor of the Plaintiff and against these Defendants, nor does it state facts sufficient to show that the Plaintiff is entitled to relief prayed for in this cause.

2nd. It does not appear from the Bill of Complaint that the general plan of rates sought to be enjoined are not sufficiently remunerative, nor that they result in taking property without just compensation or without due process of law.

3rd. It does not appear that the rates established for the City of Tulsa is not remunerative or that such rates result in taking property without just compensation or without due process of law.

4th. It does not appear from said Bill of Complaint that the leakage of gas alleged to take place in the transmission and distribution of the gas is either necessary or reasonable or cannot be prevented by reasonable effort and expense.

145 5th. It does not appear from said Bill what is the necessary or reasonable cost of collecting and transporting the gas to the various cities whose rates are fixed and sought to be enjoined.

6th. It does not appear from said Bill of Complaint what is the necessary and reasonable cost of collecting and transporting gas to the City of Tulsa.

7th. It does not appear from the Bill of Complaint what is the reasonable cost of distributing the gas in the various cities whose rates are fixed, and whose rates are sought to be enjoined, nor does it appear what is the reasonable and necessary cost of distributing the gas to the Defendant, City of Tulsa.

8th. The Bill of Complaint does not show that the Plaintiff does not have an adequate remedy at law.

BIDDISON & CAMPBELL,  
*Attorneys for Defendant-  
City of Tulsa and Frank E. Duncan.*

Endorsed: Filed in District Court on January 12, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

146 In the District Court of the United States for the Western District of Oklahoma.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Application for Restraining Order.*

The Complainant, Oklahoma Natural Gas Company, respectfully shows to the court that under the existing schedule of rates prescribed by the Corporation Commission of Oklahoma in its order No. 1886, the complainant suffered an actual deficit in the month of July, 1921, amounting to \$72,118.25; in the month of August, 1921, amounting to \$68,162.30, and in the month of September, 1921, amounting to \$84,071.81. All of complainant's expenses for the month of October have not yet been reported and compiled, but

sufficient have been reported to show that complainant's actual deficit for the month of October will exceed that for the month of September.

Complainant is not able to state the result of its operations in the month of November, inasmuch as full settlement has not been made for all the gas sold, and full reports of the expenses for said months have not yet reached the complainant; but complainant states that the operations for the month of November will also result in a deficit.

Complainant further states that the result of its operations for the year beginning November 1, 1920, and ending October 31, 1921, applying the said rates prescribed by said Corporation Commission in said order No. 1886, for plaintiff's production and transmission and distributing systems, on its main and Enid systems, would show a net income over and above taxes and expenses of only \$430,761.83 upon property having a value in excess of \$20,000,000; and said net income is without making any allowance for depreciation, amortization, correcting leakage, or for interest or dividend upon the investment; in other words, said sum would be merely the excess of plaintiff's gross income over and above its actual out of pocket expenses.

Complainant further shows that applying the existing rates to its Claremore production, Transmission and distributing systems for the year beginning November 1, 1920, and ending October 31, 1921, would cause an actual deficit in said system for said year of \$2,-837.34.

Complainant further shows that applying the existing rates to the business done in complainant's Inola production, transmission and distributing system for the said year beginning November 1, 1920, and ending October 31, 1921, would cause complainant an actual deficit for said year of \$2,046.08.

Complainant further shows that it is not taking in sufficient money to pay its ordinary operating expenses, but on the contrary is losing approximately \$2,500.00 per day; that it has been required to borrow money with which to pay its ordinary operating expenses, and now has a floating indebtedness of \$2,400,000, \$1,600,000 of which its directors have had to guarantee. Complainant shows that unless it secures a temporary restraining order, restraining the enforcement of said existing rates prescribed by said Corporation Commission its loss will be and is irreparable, and its property will be and is being confiscated without remedy.

Wherefore, complainant prays that the court will set this cause down for hearing on its application for a temporary injunction, and pending the hearing of said application for a temporary injunction, that the court will issue a restraining order restraining the defendants in this cause and each of them, and all other persons acting by, through or under them, from in any wise enforcing the schedule of rates now in effect and complained of in complainant's bill herein, or interfering with the complainant in its right to established other higher and different rates for gas by it furnished, and restraining the Corporation Commission and the members thereof from entertaining complaints, and the other de-

defendants from making complaints, against the complainant on account of installing other higher and different rates, and restraining all of the defendants from taking any proceedings before any tribunal in the State of Oklahoma seeking in any wise to enforce said rates or to interfere with complainant in its right to install and collect from its consumers other higher and different rates; and the complainant offers to submit to such conditions as the court may impose upon the granting of said temporary injunction and said temporary restraining order.

D. A. RICHARDSON,  
*Attorney for Complainant.*

AMES, CHAMBERS, LOWE & RICHARDSON,  
*Of Counsel.*

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

R. C. Sharp, being first duly sworn, on his oath says that he is Vice-President of the complainant Oklahoma Natural Gas Company, and is active in the management of its affairs, and that he makes this affidavit in its behalf; that he has read the above and foregoing application for a restraining order, and is familiar with the facts therein stated, and has personal knowledge of the facts therein stated, and that the same are true in fact.

R. C. SHARP.

Subscribed and sworn to before me this 12th day of December, 1921.

[Seal of Emma Seberger, Notary Public, Oklahoma County, Okla.]

EMMA SEBERGER,  
*Notary Public.*

My commission expires Jan. 12, 1925.

149      Endorsed: Filed in District Court on December 12, 1921.  
Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

150 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL et al., Defendants.

*Temporary Restraining Order.*

On this 16th day of December, 1921, the application of the said plaintiff for a temporary restraining order comes on for hearing pursuant to notice, and plaintiff appearing by its counsel D. A. Richardson, and said defendants Corporation Commission and members thereof and the Attorney General by their Counsel, E. L. Fulton.

Thereupon the plaintiff introduced its verified bill and said application was argued and submitted. And upon consideration of the foregoing the court finds that a temporary restraining order should be and hereby is granted herein to this effect, that the defendants and each of them be temporarily restrained from enforcing the existing rate order against the plaintiff now in force and applicable to the flat rate chargeable by the plaintiff at the city borders or gates where the plaintiff does not operate a local distributing system, and also from enforcing existing domestic distributing system rates at the cities and towns where the plaintiff conducts local distributing systems. This restraining order to be in force and effect for ten days only unless otherwise ordered, and in no event to be in force and effect, unless reentered, beyond the time of the decision herein upon plaintiff's application for a temporary injunction, and provided that this restraining order and any renewal thereof is upon this condition, to-wit, that the plaintiff shall not make any change in the city gate or city border rate in excess of ten cents more than the existing rates therefor. And further provided that the plaintiff shall not charge in excess of twenty cents per thousand cubic feet more than the existing rates for gas to domestic consumers in the cities and towns where the plaintiff conducts local distributing systems.

The foregoing order shall be in force and effect when the plaintiff shall give a bond in the sum of One Hundred Thousand Dollars (\$100,000.00) to the approval of this court or a judge thereof, conditioned that the complainant shall refund to its customers the difference between the rates collected by it under this restraining order

and the rates now in effect in the event it should be adjudged to do so.

[Seal of the United States District Court, Western District of Oklahoma.]

JOHN H. COTTERAL,  
*Judge.*

Endorsed: Filed Dec. 16, 1921. Arnold C. Dolde, Clerk.

152 In the District Court of the United States for the Western District of Oklahoma.

Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Bond.*

Know all men by these presents:

That the Oklahoma Natural Gas Company, a corporation, organized under the laws of the State of Oklahoma, as principal, and the United States Fidelity & Guaranty Company, a corporation organized under the laws of the State of Maryland, and duly qualified to transact business in the State of Oklahoma, and to make bonds in the United States Courts in said state, as surety, are held and firmly bound unto the State of Oklahoma in the penal sum of \$100,000.00, for the payment of which well and truly to be made, we, and each of us, do hereby bind ourselves, our successors and assigns firmly by these presents.

Dated at Oklahoma City, Oklahoma, this 16th day of December, 1921.

The condition of the foregoing obligation is such that,

Whereas, in the above entitled and numbered cause, on December 16, 1921, a restraining order was issued restraining the defendant from enforcing the existing schedule of rates for natural gas charged by the complainant, and

Whereas, pursuant to said order, the complainant is installing a higher schedule of rates:

153 Now, therefore, if the principal obligor shall refund to its customers the difference between the rates collected by it and the rates now in effect or the rates which may hereafter be established according to law, in the event it should be adjudged to do so, then

this obligation shall be void, otherwise it shall be and remain in full force and effect.

OKLAHOMA NATURAL GAS COMPANY,

By R. C. SHARP,

*Vice President,*

And by D. A. RICHARDSON,

*Its Attorneys.*

[SEAL.]

UNITED STATES FIDELITY & GUAR-  
ANTY COMPANY,

By J. H. KNAPP, SR.,

*Its Attorneys.*

Approved this December 16, 1921.

JOHN M. COTTERAL,

*Judge.*

Endorsed: Filed in District Court on December 16, 1921. Arnold  
C. Dolde, Clerk.

154 In the District Court of the United States for the Western  
District of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Motion for Extension of Temporary Restraining Order.*

The complainant, Oklahoma Natural Gas Company, respectfully shows the court that on December 12, 1921, it filed in this court its bill of complaint against the defendants, and in said bill of complaint prayed for a temporary injunction enjoining the defendants from enforcing against complainant the existing rates prescribed by the Corporation Commission of Oklahoma at which complainant should sell natural gas to the public; and on said day it also filed in this court its application for a temporary restraining order restraining the enforcement of said rates pending the hearing of said motion for temporary injunction.

This honorable court set said cause for hearing upon the motion for temporary injunction for December 19, 1921, but, owing to the fact that the court was not able to procure the attendance of an additional district judge and of a judge of the United States Circuit Court of Appeals on said 19th day of December, 1921, said motion for a temporary injunction has been continued by the court and is now set for hearing on January 3, 1922.

Complainant further shows that its said application for a tem-

porary restraining order was heard by this court on December 16, 1921, and the same resulted in the issuance of a temporary restraining order by this court on said day restraining the defendants and each of them from enforcing the existing rates prescribed by the Corporation Commission of Oklahoma, which this complainant was to charge for natural gas, and complainant's bond was fixed at the sum of \$100,000, which it duly gave, and which was approved by this court and duly filed.

Complainant further shows that said restraining order, unless extended, will expire on December 26, 1921.

Complainant further shows that all of the facts existing and shown to the court at the time said restraining order was granted are still true; that should the existing rates prescribed by the Corporation Commission of Oklahoma which complainant is to charge be again put into effect, the same would work irreparable injury to complainant, in that the same would cause complainant to conduct its said business at an actual loss, not only of a reasonable return upon its property used and useful, but also at an actual excess of operating expenses over its actual gross income; and the same would result in depriving complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

Complainant further shows that the continuance of complainant's motion for a temporary injunction from December 19, 1921, to January 3, 1922, was not caused by any act of complainant, and could not be avoided by complainant.

Wherefore, the premises considered, this complainant prays that this court will make and enter its order extending said temporary restraining order and continuing the same in effect for a further period of ten days from December 26, 1921, but in any event not beyond the date upon which complainant's motion for a temporary injunction shall be heard and determined.

D. A. RICHARDSON,  
*Solicitor for Complainant.*

156 STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

D. A. Richardson, on his oath states, that he is attorney for the complainant herein; that complainant is a corporation, and all its chief officers are at this time outside of the Western District of Oklahoma, and that he, the said D. A. Richardson, has full power and authority to verify the above and foregoing motion in complainant's behalf; and that he is familiar with the matters and facts alleged in said motion.

He further states that the matters and facts stated in said motion are true.

D. A. RICHARDSON.

Subscribed and sworn to before me this 23rd day of December, 1921.

[SEAL.]

EMMA SEBERGER,  
*Notary Public.*

My commission expires Jan. 12, 1925.

Endorsed: Filed in District Court on December 23, 1921. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

157 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Plaintiff,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Order.*

On this 23rd day of December, 1921, it being made to appear to this court that the application of the plaintiff for a temporary injunction in this cause cannot be heard prior to January 3, 1922, it is hereby ordered, on application of the plaintiff, due cause being shown, that the temporary restraining order granted herein of date December 16, 1921, be and it is hereby renewed and extended for ten days in addition to, and beginning on, the expiration of the original term of ten days heretofore granted, and to the same effect as if herein fully recited, provided that this order shall be in force only on the giving by the plaintiff of a good and sufficient bond in the sum of \$20,000, to the approval of this court or a judge thereof, condition for the re-payment by the plaintiff to its customers of the difference between the rates as fixed by the defendant Commission and the rates as put in effect by virtue of this order or as hereafter established by law, in event the plaintiff shall be adjudged to do so, and provided further that this order shall not be in effect after the decision on said motion for a temporary injunction.

JOHN H. COTTERAL,  
*District Judge.*

Endorsed: Filed Dec. 23, 1921. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

[Endorsed:] 501. Eq. Copy Order extending temporary restraining order.

158 In the District Court of the United States for the Western  
District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

VS.

CAMPBELL RUSSELL et al., Defendants.

*Bond.*

Know all men by these presents:

That the Oklahoma Natural Gas Company, a corporation, organized under the laws of the State of Oklahoma, as principal, and William Mee, of Oklahoma City, Oklahoma, as surety, are held and firmly bound unto the State of Oklahoma in the sum of Twenty Thousand (\$20,000.00) Dollars, for the payment of which well and truly to be made, we, and each of us, do hereby bind ourselves, our successors, assigns, heirs, executors and administrators, firmly by these presents.

Dated at Oklahoma City, Oklahoma, this 26th day of December, 1921.

The condition of the foregoing obligation is such that,

Whereas, in the above entitled and numbered cause, on December 23, 1921, a restraining order issued on December 16, 1921, was by order of the court extended for an additional ten days, restraining the defendants during said time from enforcing the existing schedule of rates for natural gas charged by the complainant, and

Whereas, pursuant to said order, the complainant is continuing to charge its patrons a higher schedule of rates for gas;

Now, therefore, if the principal obligor shall refund to its customers the difference between the rates collected by it during  
159 said ten days and the rates now in effect or the rates which  
may hereafter be established according to law, in the event  
it should be adjudged to do so, then this obligation shall be void,  
otherwise it shall be and remain in full force and effect.

OKLAHOMA NATURAL GAS COMPANY,

By D. A. RICHARDSON,

*Its Attorney.*

WILLIAM MEE.

STATE OF OKLAHOMA,

*Oklahoma County, ss:*

William Mee on his oath states that he is the owner of unincumbered property situated in the State of Oklahoma, which is worth, over and above all his liabilities and exemptions, the sum of \$40,000.00; and that said property consists of the following: \$95,-

000.00 or more of stock in the Security National Bank of Oklahoma City, Okla., at par value worth more than par.

WILLIAM MEE.

Subscribed and sworn to before me this 26th day of December, 1921.

[SEAL.]

LOUIS R. TAYLOR,  
*Notary Public.*

My commission expires Mch. 9, 1925.

Approved December 26, 1921.

JOHN H. COTTERAL,  
*District Judge.*

Endorsed: Filed in District Court on December 26, 1921. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

160 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Order.*

On this the 3rd day of January, 1922, there coming on to be heard before the court composed of the Honorable Kimbrough Stone, United States Circuit Judge, and the Honorable John H. Cotteral and the Honorable John C. Pollock, District Judges, the application of the complainant for a temporary injunction, which application by stipulation of the parties was set for hearing in Kansas City, Missouri; the complainant appearing by its solicitor D. A. Richardson, and the defendants Campbell Russell, Art L. Walker and E. R. Hughes, composing the Corporation Commission of Oklahoma, appearing by their solocitors E. S. Ratliff and H. G. Snyder; and the defendant City of Tulsa and F. E. Duncan its city attorney appearing by their solicitors F. E. Duncan and A. J. Biddson; and the defendants the City of Sapulpa and Leroy J. Burt, its city attorney, appearing by their solicitor Leroy J. Burt; and the defendants having moved the court for a continuance, and having consented and agreed in open court that if such continuance should be granted to them the temporary restraining order heretofore granted by the court herein and already once extended might be extended and continued in effect until the hearing of said application for temporary injunction:

It is therefore by the court ordered that upon motion of said defendants and upon the stipulations so made the complainant's application for a temporary injunction herein be and the same is hereby continued, and the same is hereby set for hearing in the United States Court room in Oklahoma City, Oklahoma, on 161 January 31, 1922, at 10 o'clock A. M.

It is further by the court ordered pursuant to said stipulation, that the temporary restraining order issued herein on December 16, 1921, and once extended, be and it is hereby renewed and extended from this date until the hearing and determination of complainants' application for a temporary injunction, to the same effect as if the said restraining order were herein set out in full, excepting however as to the rates for gas in the City of Claremore.

It is further ordered that the defendants herein be and they are hereby required to serve upon the solicitor for complainant, on or before January 24, 1922, copies of all affidavits and exhibits which they intend to introduce in evidence upon the hearing of the application for temporary injunction herein.

KIMBROUGH STONE,  
*Circuit Judge.*  
JOHN C. POLLOCK,  
*District Judge.*  
JOHN H. COTTERAL,  
*District Judge.*

Endorsed: Filed in District Court on January 3, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

162 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Bond.*

Know all men by these presents:

That the Oklahoma Natural Gas Company, a corporation, hereinafter styled principal, and Fidelity and Deposit Company of Maryland hereinafter styled surety, do hereby acknowledge and declare themselves and each of them jointly and severally bound and indebted unto the State of Oklahoma in the principal sum of Three Hundred Thousand Dollars (\$300,000.00) well and truly to be paid according to the terms and conditions hereof.

This bond and obligation is upon condition, however, which is as follows:

On December 16, 1921, a Restraining Order was granted in the above entitled cause on the application of the complainant above named, being the principal herein, under the terms whereof the enforcement of the rate order of the Corporation Commission of Oklahoma in said cause complained of was temporarily restrained on condition, among others, that no greater or higher rates than those expressed in the Restraining Order be collected pending the effectiveness of the said order. Such restraining order has from time to time been continued in effect and, as manifested by the approval of this bond by the Judge of said court, its continued effectiveness until the court shall dispose of the application for temporary injunction is conditioned upon the entrance into this and such further obligation as shall be required by the court.

163 And it is further proposed that this bond shall further secure the performance by the principal of each and every of the terms and conditions which may be included in any order of temporary injunction granted in said cause, if, in fact, such temporary injunction shall or may be granted.

In the event a temporary injunction shall not be granted in said cause the principal herein hereby acknowledges its obligation then to make prompt refund of the aggregate excess by it from time to time collected (plus interest at the rate of 6% per annum) over the rates and amounts which would or could have — collected had such restraining order not been granted.

And further, if a temporary injunction be granted, conditioned that the complainant shall collect at rates not in excess of a figure or figure less than those expressed in the said restraining order, then complainant herein acknowledges its obligation in such event to make prompt refund of the aggregate excess by it from time to time collected under and during the effectiveness of the restraining order, (plus interest at the rate of 6% per annum) over and above the maximum rates expressed in such temporary injunction.

And further, in the event a temporary injunction shall be granted and thereafter shall be finally vacated, then and in such event complainant here acknowledges its obligation to make prompt refund of the aggregate excess by it from time to time collected (plus interest at the rate of 6% per annum) over the rates and amounts it would or could have collected had such temporary injunction or/and restraining order not been granted.

The obligations to refund in the events hereinabove set forth shall exist regardless of whether the aggregate amount to be refunded be equal to, greater or less than the aggregate total of bonds given or required in respect of such restraining order and/or temporary injunction, if any; and such refund shall be made at such time and in such manner as shall or may be directed or provided by the said court or by any person or body designated by the court to make or supervise the making of the refunds to those entitled thereto.

164 The said obligation to refund in such events shall be for the use and benefit of those from whom such excess rates so to be refunded have been or shall have been collected or received.

The principal herein further acknowledges its obligation to abide by, keep and perform the every term and condition whether hereinabove expressed or suggested or not, which may be included in any order of temporary injunction which shall be granted in said cause, if, in fact, such an order shall or may be granted.

Now, if the principal herein shall well and truly keep, perform and fulfill the every term, covenant and undertaking herein above expressed, then and in such event this bond and obligation shall be and become null and void; otherwise, the same shall be and remain ccessors, assigns and legal representatives jointly and severally.

As a part of the consideration of this instrument, it is expressly declared that this bond and obligation shall be and is in addition to the amounts of bonds and obligations heretofore or which hereafter may be given or required in the said cause.

Executed and delivered this March 9, 1922.

OKLAHOMA NATURAL GAS COMPANY,  
*Principal,*

By D. A. RICHARDSON,  
*Its Attorney.*

[SEAL.] FIDELITY AND DEPOSIT COMPANY OR  
MARYLAND,

*Surety,*  
By D. NEWELL JONES,  
*Attorney in Fact.*

O. K. as to form.

AMES, CHAMBERS, LOWE &  
RICHARDSON,  
COTTINGHAM, HAYES, GREEN &  
McINNIS,  
*For Complainant.*

E. S. RATLIFF,  
ASP, SNYDER, OWEN & LYBRAND,  
*For Defendant.*

Approved March 9, 1922.

JOHN H. COTTERAL,  
*Judge.*

Endorsed: Filed in District Court March 9, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

165

No. 1.

In the District Court of the United States for the Western District  
of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit of R. C. Sharp.*

R. C. Sharp, being first duly sworn, on his oath states that the financial condition of the Oklahoma Natural Gas Company, due entirely to the fact that its rates for gas have been and are wholly and totally inadequate, is desperate. The Oklahoma Natural Gas Company has a funded indebtedness of \$1,010,000. It has a current indebtedness as follows: accounts payable \$192,231.22; notes payable, \$1,661,362.52; indebtedness for gas purchased now due and payable \$260,566.86; consumers' security deposits as of October 30, 1921, \$282,632.10; deposits made with it for drilling gas \$54,388.

The notes payable above mentioned are for money which the Oklahoma Natural Gas Company has been required to borrow to pay its current operating expenses.

The Oklahoma Natural Gas Company now owes \$45,000 to the National Supply Company and the Butler County National Bank, which was due on December 27, 1921, and which it has been unable to pay.

It also owes \$344,638.37 which is due in January, 1922, for borrowed money, for drilling wells and for pipe.

The Oklahoma Natural Gas Company owes \$310,813.46 due in February, 1922, for borrowed money, for compressing stations, for drilling wells and for pipe.

The Oklahoma Natural Gas Company owes the Mellon National Bank of Pittsburgh, the Columbia National Bank of Pittsburgh, Pennsylvania, the Monongahela National Bank of Pittsburgh, Pennsylvania, the Butler County National Bank of Butler, Pennsylvania, and the First National Bank of Emlington the sum of \$945,000, which is due in April, 1922.

The Oklahoma Natural Gas Company has no money with which to take care of any of this indebtedness.

The Oklahoma Natural Gas Company has \$120,000 of taxes due the state and counties in Oklahoma on December 31, 1921.

It has no money with which to pay these taxes and it has endeavored to get extensions thereof, and has procured extensions upon a portion of the same for fifteen days, and extensions on a portion of the remainder for thirty days, and a portion of it it is unable to

procure extensions on at all. Should these taxes not be paid a penalty of 18% per annum is charged upon it.

The Oklahoma Natural Gas Company has been operating as economically and as efficiently as it has been possible to do; and its present financial condition is due entirely to the fact that its rates have been and are wholly inadequate to render it a reasonable return upon the value of its property used and useful in rendering its public service. All that the company has made and much more it has been required to put back into the property in order to get and furnish a constantly diminishing quantity of gas to its patrons.

R. C. SHARP.

Subscribed and sworn to before me this 30th day of December, 1921.

[SEAL.]

EMMA SEBERGER,

Notary Public.

My commission expires Jan. 12, 1925.

Endorsed: Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

167

No. 3.

In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit of R. C. Sharp.*

R. C. Sharp, being first duly sworn, on his oath deposes and says:

My name is R. C. Sharp. I am Vice President of the Oklahoma Natural Gas Company, an Oklahoma corporation, and I have been such Vice President, and have been active in the management of the affairs of said Oklahoma Natural Gas Company, since September 25, 1917.

I attended each and every hearing had before the Corporation Commission upon the application of the Oklahoma Natural Gas Company for an increase in rates in cause No. 4023, which resulted in order No. 1886; and I heard all of the evidence which was given before the Commission in said cause. The Oklahoma Natural Gas Company's application was filed before the Corporation Commission on August 5, 1920. Numerous hearings were had, and a vast amount of testimony was taken, and the cause was not finally decided by the Corporation Commission of Oklahoma until June 25, 1921. The following evidence introduced before said Corporation Commission in

regard to the value of the property of the Oklahoma Natural Gas Company used and useful in rendering its said public service was uncontradicted.

First, an exhibit prepared by J. M. Gayle, an accountant, and the testimony given by Mr. Gayle in regard to said exhibit 168 showing an audit of the vouchers of the Oklahoma Natural Gas Company which were used in purchasing and constructing its property used and useful in furnishing gas to the public, and which Mr. Gayle testified amounted on October 31, 1919, to \$16,190,382.40, for all of which said Gayle found and audited the proper vouchers, excepting only for the sum of \$9,588.91, for which sum only vouchers were missing.

Second, exhibits prepared by H. E. Musson, and his testimony in regard thereto. H. E. Musson testified that he had inventoried and appraised the property of the Oklahoma Natural Gas Company used and useful in rendering its service on two bases: First, on the basis of its original cost on October 31, 1919, which he found to be \$16,061,960.70; and second, on the basis of replacement or reproduction value of the property on October 31, 1919, which he found to be \$33,023,258.94. Mr. Musson testified that both the original cost and reproduction value were exclusive of any and all additions made since October 31, 1919, and were exclusive of going concern value, working capital and cost of establishing the business, and were without depreciation.

Mr. Musson testified that the going concern value of the property was 15% of the sum of the value of the various units comprising it. He testified that the property was 82% efficient, that is, that depreciation was 18%.

Third, exhibits prepared by M. E. Durham, an appraisal engineer in the employment of the Corporation Commission, and the testimony of Mr. Durham in regard to said exhibits, the important parts of which said testimony have been transcribed and certified by the official court reporter of the Commission who took the same, and which will be introduced herein.

Fourth, the testimony of Mr. J. E. Dalious, auditor of the Oklahoma Natural Gas Company, in regard to additions to the properties made after October 31, 1919.

All of the testimony given before said Commission showed without contradiction that the going concern value of the Oklahoma Natural Gas Company's property used and useful in rendering its said 169 public service was 15% of the sum of the value of the various units composing said property, and that said property was 82% efficient.

From the order of the Corporation Commission prescribing the rates which the Oklahoma Natural Gas Company should charge, said company appealed to the Supreme Court of Oklahoma prior to the institution of this suit, and it also applied to the Supreme Court for a supersedeas, suspending the enforcement of the rates prescribed by said Corporation Commission pending the hearing and determination of said appeal, and said Supreme Court refused to grant said supersedeas. Said appeal is set for submission in the Supreme Court of Oklahoma on April 10, 1922.

The record in said cause consists of about 1,500 pages of type-written testimony, in addition to the pleadings of the various parties, and of 49 different exhibits. Of these 49 different exhibits ten of them are large books averaging about 300 pages each, and the other 39 exhibits will probably average 50 pages each. The record is extremely voluminous and has been but recently completed by the Corporation Commission. Considering the amount involved, and the vastness of the record, the preparation of the case for submission to the Supreme Court of Oklahoma will be laborious and will require several months, so that a decision can not be had in said Supreme Court for many months to come.

Affiant has investigated the period of time which is ordinarily required by the Supreme Court of Oklahoma in deciding rate cases appealed from the Corporation Commission of Oklahoma, and upon said investigation he has received the following information and learned the following facts, to-wit:

In case No. 8904 in the Supreme Court of Oklahoma, entitled Mangum Electric Co. v. City of Mangum, which was an appeal from an order of the Corporation Commission reducing electric rates in the City of Mangum, the appeal was filed in the Supreme Court of Oklahoma on February 8, 1917; and the cause was not decided in said Supreme Court until April 30, 1918.

170 In cause No. 9084 in the Supreme Court of Oklahoma, entitled City of Pawhuska v. Pawhuska Oil & Gas Co., which was an appeal from an order of the Corporation Commission fixing gas rates in the City of Pawhuska, the appeal was filed in the Supreme Court of Oklahoma on April 27, 1917, and the cause was decided on July 31, 1917. In that case and in the case of Mangum Electric Co. v. City of Mangum, nothing was involved except the local electric property in the City of Mangum and the local gas property in the City of Pawhuska.

In case No. 12066, entitled City of Bartlesville v. Corporation Commission of Oklahoma, which was an application for writ of prohibition brought by the City of Bartlesville against the Corporation Commission of Oklahoma, to prevent the Commission from fixing gas rates in the City of Bartlesville, and which said case involved merely a question of law and not the examination of a large record, the cause was filed in the Supreme Court on February 18, 1921, and was not decided until June 14, 1921.

In case No. 12358 in the Supreme Court of Oklahoma, entitled Oklahoma Gas & Electric Co. v. Corporation Commission of Oklahoma, which was an appeal from an order of the Corporation Commission of Oklahoma reducing electric rates, and which said order was made by the Corporation Commission not upon a valuation of the property of the Oklahoma Gas & Electric Company, but merely upon the basis that the fuel cost of the Oklahoma Gas & Electric Company had been reduced, and which involved a very small record, said appeal was filed in the Supreme Court of Oklahoma on June 8, 1921, and it was not decided until October 18, 1921, and the petition for rehearing was denied on November 8, 1921.

In case No. 11228, entitled Eagle-Picher Lead Co. et al. v.

Henryetta Gas Co., which was an appeal from an order of the Corporation Commission fixing gas rates of the Henryetta Gas Company, the said appeal was filed in the Supreme Court of Oklahoma on February 25, 1920, and said cause has not been decided yet.

171 In the average case appealed from the Corporation Commission of Oklahoma, where the property involved is only that serving one town, and the record is small and the exhibits few, it ordinarily requires all the way from four months to a year in which to obtain a decision of an appeal in the Supreme Court of Oklahoma. After a decision has been rendered in said Supreme Court, no mandate goes down for fifteen days, during which time the losing party has the right as of course to file a petition for rehearing, and upon a petition for rehearing being filed within said fifteen days then the mandate is stayed automatically until the determination of the petition for rehearing. In addition to that, if it is made to appear to the court that more time than fifteen days is required in which to prepare and file a petition for rehearing, and extension of time is ordinarily granted, and during said time the mandate of the court is stayed.

None of the cases hereinbefore mentioned involved property serving more than one town; and the values were small and the records small; whereas in the case of the Oklahoma Natural Gas Company there is involved a production and transmission system, including a pipe line system 1,400 miles long, with its attendant compressors and other equipment, which production and transmission system has a value in excess of fifteen million dollars. In addition to that there is also involved the distributing plants in some 25 or 30 towns or cities in which the Oklahoma Natural Gas Company owns the franchise and the distributing plants. To prepare such a case for submission to the Supreme Court, including the statement of the case and of the evidence, the examination of the values, the amount of gas sold, the revenue, the expenses, and briefing these before the Supreme Court, if the same be properly and adequately done, would require several months; and the examination and study of the record and the preparation of an opinion on the part of the Supreme  
172 Court, in order to determine the same correctly and justly, would also involve several additional months.

The application of the Oklahoma Natural Gas Company for rates as to the Claremore and Inola systems and properties has not been heard by the Corporation Commission, and has not been set for hearing.

R. C. SHARP.

Subscribed and sworn to before me this 30th day of December, 1921.

[SEAL.]

EMMA SEBERGER,  
*Notary Public in and for Oklahoma  
County, Oklahoma.*

My commission expires January 12, 1925.

Endorsed: Filed in District Court on February 27, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

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No. 4.

In the District Court of the United States for the Western District of Oklahoma.

No. 501. Eq.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit of R. C. Sharp.*

R. C. Sharp, being first duly sworn, on his oath deposes and says:

My name is R. C. Sharp. I am vice-president of the Oklahoma Natural Gas Company, an Oklahoma corporation, and I have been such vice president, and have been active in the management of the affairs of said Oklahoma Natural Gas Company since September 25, 1917.

The Oklahoma Natural Gas Company is engaged in the public business of furnishing natural gas in the towns and cities enumerated in complainant's bill herein, and also it furnishes through its production and transmission portions of its property, natural gas to the local, independent distributing companies, mentioned in the bill herein, which distributes the same in the towns and cities in said bill stated.

The Oklahoma Natural Gas Company's authorized capital stock is \$15,000,000. Of this \$14,300,000 has been issued and is now outstanding. The Oklahoma Natural Gas Company has now outstanding \$1,010,000 of bonds, and it has a floating indebtedness

174 in the sum of \$2,244,761, all of which and much more has been invested by the Oklahoma Natural Gas Company in property used and useful in rendering its public service. Of said floating indebtedness \$1,640,000 consists of short time notes given for money borrowed by said Oklahoma Natural Gas Company, and the remainder consists of accounts payable. In order for the Oklahoma Natural Gas Company to borrow this money from the banks, it has been necessary for three of the directors of that company to endorse the same; and the amount of said indebtedness has grown to such an extent that the directors of the Oklahoma Natural Gas Company are no longer willing to endorse additional paper of said company, and have refused to do so; and the Oklahoma Natural Gas Company has now reached a stage where it is unable either to issue and sell additional bonds, or to borrow additional money.

The volume of business done by the Oklahoma Natural Gas Company has been decreasing each year since the year 1917; and at

the same time the expense of doing business and the investment required to do business has been steadily increasing each year since 1917. In 1917 the Oklahoma Natural Gas Company sold in excess of twenty-nine billion cubic feet of natural gas. In 1918 it sold 27,225,102 M cubic feet of gas. In 1919 its total sales of gas were 21,997,179 M cubic feet. In the calendar year 1920 its total sales of gas in all its properties were 20,030,706 M cubic feet. For the year beginning November 1, 1920, and ending October 31, 1921, its total actual sales of gas from all of its properties in the State of Oklahoma, including its Claremore, Inola, and Ramona systems, measured by the meter readings of its consumers, amounted to only 13,740,290 M cubic feet.

175 The cost of natural gas in the field has been steadily increasing; originally a gas well could be purchased for \$100.; then gas cost two and a half cents a thousand cubic feet at the mouth of the well; later gas went to three cents a thousand cubic feet at the mouth of the well. In 1918 the Oklahoma Natural Gas Company was required to raise its price to six cents a thousand at the mouth of the well; and in October 1920 the Oklahoma Natural Gas Company was required to and did pay, and has ever since paid, ten cents per thousand at the mouth of the well for all gas which it purchased. All of the gas fields from which the Oklahoma Natural Gas Company originally obtained its gas have long since been exhausted, and many new fields to which the Oklahoma Natural Gas Company has built lines have also been exhausted. By the year 1917 the Oklahoma Natural Gas Company's supply of gas was inadequate, and in order to obtain additional gas it was required to and did build new pipe lines to new fields, at a cost to it of \$974,473.09, which was new money furnished by its stockholders. Its net earnings, in its entire production, transmission and distributing business for that year, after deducting its usual and ordinary operating and maintenance expenses, but making no allowance for either depreciation or amortization, were \$78,767.58; and the building of the new lines was not reckoned as an expense but as an additional investment.

In 1918 the Oklahoma Natural Gas Company's net earnings in its entire gas business, after paying its usual and ordinary operating expenses, but making no allowance for either depreciation or amortization, were \$1,225,753.52; but, in order to continue to furnish gas, the Oklahoma Natural Gas Company was required to and did build, in 1918, additional pipe lines and compressor stations, at a cost to it of \$1,632,004.72. The cost of these new lines and compressor stations was not treated as an expense, but as an additional investment.

176 In 1919 the Oklahoma Natural Gas Company's net earnings, after paying its taxes and expenses, but making no allowance for depreciation and amortization, were \$1,343,579.33; but in that year it was required to build new pipe lines to new gas fields, which it did at a cost of \$1,419,667.39.

In the year 1920 the Oklahoma Natural Gas Company's net earnings, by making no allowance for amortization or depreciation, were

\$1,460,748.02; and the same year that company was required to and did build new pipe lines to new fields at a cost to it of \$1,528,195.81.

In the years 1917, 1918, 1919, and 1920, the Oklahoma Natural Gas Company's net earnings, by making no allowance for depreciation or amortization, totaled \$4,108,848.45; and during the same period the Oklahoma Natural Gas Company was required to make an additional investment amounting to \$5,554,341.01, in order to continue to sell a constantly dwindling supply of gas. During said four years the Oklahoma Natural Gas Company spent for new pipe lines to new gas fields and for compressor stations and in paying its usual and ordinary expenses and taxes, \$1,445,491.56 more than were its gross receipts. The money for the new pipe lines and compressor stations was new money put into the business by the stockholders of the Oklahoma Natural Gas Company. These additional pipe lines and compressor stations were not built for the purpose of enlarging or increasing the volume of business done by the Oklahoma Natural Gas Company or for the purpose of acquiring new customers or patrons, but merely for the purpose of being able to continue in business and to continue to serve those whom  
177 the Oklahoma Natural Gas Company was already obligated to serve with a constantly diminishing supply of gas.

The Oklahoma Natural Gas Company now has approximately 1,400 miles of pipe lines. The distances which it is now required to transport its gas, the increased cost of gas in the field, the increased cost of producing gas, the enormous increases which the Oklahoma Natural Gas Company has been required to make in its investment in order to get and furnish gas, and the increase in its operating expenses and taxes, the cost of operating compressor stations on account of decrease in the rock pressure of the wells, the far extension of the Oklahoma Natural Gas Company's lines, and the increased number of employees thereby made necessary, make the cost of furnishing gas such that the Oklahoma Natural Gas Company can sell but little industrial gas in competition with coal and fuel oil.

Affiant has been a close and careful observer of the development of gas fields in the State of Oklahoma since 1917, and of the life and depletion of the fields, and affiant has carefully studied the reports of the United States Geological Survey upon said gas fields; and in affiant's best judgment it will be impossible for the Oklahoma Natural Gas Company to continue in business for a longer period than eight years from this date; and it is highly probable that that period of time may be cut in half.

Since October 31, 1919, the Oklahoma Natural Gas Company has been required to and it has made necessary additions to its said production and transmission system, exclusive of its Claremore production and transmission system, amounting to \$1,232,384.14.

In the Claremore production and transmission system the  
178 Oklahoma Natural Gas Company has made additions since October 31, 1919, costing \$142,580.25; and from said pro-

duction and transmission property it has made removals amounting to \$331,465.87, leaving a net removal from said property amounting to \$188,895.62

To the Claremore distributing system the Oklahoma Natural Gas Company has added since October 31, 1919, equipment costing \$18,765.43, and has removed from said system equipment costing \$756.84, making a net addition of \$18,008.59.

The City of Claremore is served by the Claremore production, transmission and distributing system belonging to the Oklahoma Natural Gas Company, and said city and its inhabitants alone are served by said system.

Since October 31, 1919, the Oklahoma Natural Gas Company, has added to its Tulsa plant, in excess of removals therefrom, additions costing \$489,630.07.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Sapulpa plant, in excess of removals therefrom, property costing \$18,550.08.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Chandler plant, in excess of removals therefrom, property costing \$38,916.08.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Coweta plant, in excess of removals therefrom, property costing \$1,339.26.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Davenport plant, in excess of removals therefrom, property costing \$724.20.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Dawson plant, in excess of removals therefrom, property costing \$523.17.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Deer Creek plant, in excess of removals therefrom, property costing \$627.22.

Since October 31, 1919, the Oklahoma Natural Gas Company has removed from its Depew plant, in excess of additions made thereto, property costing \$528.08.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Edmond plant, in excess of removals therefrom, property costing \$6,031.17.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Haskell plant, in excess of removals therefrom, property costing \$34,433.26.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Hunter plant, in excess of removals therefrom, property costing \$123.14.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Inola distributing system, in excess of removals therefrom, property costing \$1,434.31.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Kellyville plant, in excess of removals therefrom, property costing \$1,253.78.

Since October 31, 1919, the Oklahoma Natural Gas Company

has added to its Lamont plant, in excess of removals therefrom, property costing \$565.93.

Since October 31, 1919, the Oklahoma Natural Gas Company has removed from its Luther distributing system, in excess of additions made thereto, property costing \$54.98.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Meeker plant, in excess of removals there-  
180 from, property costing \$129.62.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Midlothian plant, in excess of removals therefrom, property costing \$31.22.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Nardin plant, in excess of removals therefrom, property costing \$165.61.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Peckham plant, in excess of removals therefrom, property costing \$160.23.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Pond Creek plant, in excess of removals therefrom, property costing \$510.70.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Porter plant, in excess of removals therefrom, property costing \$189.24.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Red Fork plant, in excess of removals therefrom, property costing \$5,302.25.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Shamrock plant, in excess of removals therefrom, property costing \$728.56.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Stroud plant, in excess of removals therefrom, property costing \$1,017.36.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Turley plant, in excess of removals therefrom, property costing \$201.22.

Since October 31, 1919, the Oklahoma Natural Gas Company has added to its Wellston plant, in excess of removals therefrom,  
181 property costing \$1,675.92.

All of the foregoing additions was property used, useful and necessary in rendering the Oklahoma Natural Gas Company's public service.

The going concern value of the Oklahoma Natural Gas Company's said properties, was and is 15 per cent of the aggregate value of the various units composing said property; and all of said testimony before said Commission was to said effect, and there was no testimony to the contrary.

The working capital necessary for the Oklahoma Natural Gas Company in carrying on its business, amounts to its expenses for one and one-half months; and it has been customary for the Corporation Commission to allow such sum.

In valuing the production and transmission property of the Oklahoma Natural Gas Company, even on the original cost basis, the Corporation Commission excluded from its valuation property owned by the Oklahoma Natural Gas Company and necessary for the public service, and which costs the Oklahoma Natural Gas Company the sum of \$688,027.78, the facts with respect to which were and are as follows: The Oklahoma Natural Gas Company was and is required to be constantly building lines to new wells and new gas fields, and to be drilling new wells, and repairing its lines, and building and repairing compressor stations; and for said reasons it was and is required to keep in stock and on hand in its warehouses for use in its production and transmission system, mains and other pipes, fittings, casing, and other such supplies. One of such warehouses is located in the City of Tulsa, Oklahoma, and the stock therein inventoried \$609,404.32. Another such warehouse was situated at Cement, Oklahoma, and the stock therein inventoried \$65,182 082.36. Another such warehouse was situated at Blackwell, Oklahoma, and the stock therein inventoried \$8,604.18. In addition to that the Oklahoma Natural Gas Company owned land in Enid costing \$1,400 and buildings situated thereon costing \$3,536.92, which were used and useful in the Enid transmission and production system, the Oklahoma Natural Gas Company itself not owning the distributing system in Enid. When the engineers made up their inventory and appraisal of the Oklahoma Natural Gas Company's property, they listed the said warehouse stock in Tulsa as being a part of the Tulsa distributing system, and did not place the same in the Oklahoma Natural Gas Company's production and transmission property. They also listed the said property in Enid, Blackwell and Cement as being in those towns, although the Oklahoma Natural Gas Company owned no distributing system in either of those towns, and received no revenue from either of those towns; and they omitted to place the same in complainant's production and transmission property. This was shown by the evidence introduced before said Commission. In determining the value of the Oklahoma Natural Gas Company's production and transmission property, the Corporation Commission did not include the property in Enid, Blackwell, and Cement, and as the Oklahoma Natural Gas Company owned no distributing system in either of those towns, said property was not considered in fixing any rates, for the Oklahoma Natural Gas Company. The Corporation Commission deducted the warehouse stock in Tulsa from the value of the Tulsa distributing system, but did not add the same to the production and transmission property. The Corporation Commission's auditor stated that warehouse stock was properly part of the working capital, but in the tables used by said Commission, a working capital of only \$494,382.39 was allowed for the production and transmission part of the business, whereas, if said warehouse stocks should be considered as working capital, then considering also the money which the Oklahoma Natural Gas Company is required constantly to keep on hand for the payment of salaries and wages, for gas purchased,

and for other expenses, its working capital would be in excess of one million dollars.

The Oklahoma Natural Gas Company has operated under said rates fixed by said Corporation Commission in its said order of June 25, 1921, in its own distributing plants and as to all the independent distributing companies which it serves, except those owned by the Oklahoma Gas & Electric Company, which appealed from said order and obtained a supersedeas thereof. The Oklahoma Gas & Electric Company has recently dismissed its said appeal, however, and applying the said rates so fixed by the Corporation Commission to all of the business done by said Oklahoma Natural Gas Company from July 1st, has resulted in actual out-of-pocket deficit amounting to \$72,118.25 for the month of July, \$68,162.30 for the month of August, and \$84,071.81 for the month of September. Complete figures have not yet been compiled respecting the month of October, inasmuch as full settlements have not yet been made for said month, but affiant is sufficiently informed as to be able to state that the actual out-of-pocket deficit of the Oklahoma Natural Gas Company for the month of October will exceed that for the month of September. The figures given above are exclusive of any allowance for interest or dividends on the investment, depreciation upon the property or amortization thereof; but include only the actual excess of expenses over and above gross income.

Compilations and calculations have been made under this affiant's supervision, whereby the said rates so prescribed by said Corporation

Commission in its Order No. 1886 have been applied to the  
184 actual operation of the Oklahoma Natural Gas Company's business and its actual sales of gas and expenses from November 1, 1920, to October 31, 1921. The result of said compilations and tabulations are set forth in the bill of complaint herein, showing the amount of gas sold in each distributing system, the expenses in each distributing system, and the net earnings in each distributing system, by applying the said rates to said year's business, and the same are truly and correctly stated in the bill of complaint herein, and affiant refers to the said statements so made in said bill, and adopts the same in this affidavit, without specifically re-stating them herein.

Prior to July 1, 1921, the Oklahoma Natural Gas Company did not keep meters at the city gates or town borders of the various towns and cities in which it owned the distributing systems, so that it was not able to determine with accuracy the leakage in said distributing plants prior to said time. On July 1, 1921, however, it installed meters at the town borders or city gates of each town and city which it served directly, and from that time on has measured the gas put into the distributing system of each of said towns and cities. In the month of July 1921, the leakage, shrinkage, and unaccounted for gas in all of the distributing plants owned by the Oklahoma Natural Gas Company averaged 27.6 per cent of the amount of gas delivered into said plants. During the month of August 1921 the said leakage averaged 16.6 per cent; during the month of September 1921 the said leakage averaged 23.4 per cent;

during the month of October 1921 the said leakage averaged 27.8 per cent; and during the month of November 1921 the said leakage averaged 21.3 per cent.

185 The Corporation Commission of Oklahoma has never heretofore prescribed any standard of leakage and shrinkage to which it undertook to require any gas company to conform. In its said order No. 1886, it purported to allow the Oklahoma Natural Gas Company a leakage of only 10 per cent. The actual leakage is far in excess of said sum. The rates which the Oklahoma Natural Gas Company has been permitted to charge for its gas have never, since this affiant has been connected with said company, been sufficient to enable this company to earn or set aside any sum with which to take care of depreciation upon its plant or to amortize any portion thereof, or to correct the leakage therein. The leakage and shrinkage in the Oklahoma Natural Gas Company's distributing systems is not in excess of the usual and ordinary amount of leakage prevailing generally in all natural gas distributing systems in the State of Oklahoma. In the City of Tulsa and in the City of Sapulpa, served by the Oklahoma Natural Gas Company, the electric street railway companies' lines are not properly bonded and considerable deterioration results to the Oklahoma Natural Gas Company's pipes and mains from electrolysis, which the Oklahoma Natural Gas Company is unable to stop. In the cities of Tulsa, Sapulpa, Claremore and Haskell, the streets and alleys are, for the most part, paved, and the Oklahoma Natural Gas Company's pipes and mains are covered with paving, and to take up said pipes and undertake to correct the leakage therein would cost far more than could be saved by saving said leakage. To open the pavement and correct the leakage in the Oklahoma Natural Gas Company's distributing system at Tulsa would cost almost as much as it would to construct a new distributing system.

186 Considering the depreciation upon the property, and the fact that the natural gas business is limited in its duration by the limit upon the supply of gas available to a company, and the necessity of amortizing the investment against the time when the supply of gas will be exhausted and the company's property will become worthless, the Oklahoma Natural Gas Company has, in fact, made no money, and it has merely been using up its investment in serving the public.

There has not been a time since this affiant has been connected with the Oklahoma Natural Gas Company when its earnings have been sufficient to set aside any sum in any year for depreciation or amortization, after paying a dividend of eight per cent. There has not been a time since affiant has been connected with the Oklahoma Natural Gas Company when it was able to accumulate a reserve fund for the purpose of taking care of either the depreciation or amortization or of building new lines to new fields.

The natural gas business is so hazardous in its nature that a natural gas company cannot sell its bonds at a reasonable price in the market; and the Oklahoma Natural Gas Company therefore has been required to borrow money on short time notes with its directors

personally endorsing the same, in order to get money to defray a portion of its operating expenses, and to build some of its new lines.

The Oklahoma Natural Gas Company's taxes and other out-of-pocket expenses for its production and transmission systems, exclusive of Claremore, Inola, and Ramona, for the year ending October 31, 1921, were \$3,814,422.09; and this was exclusive of depreciation, amortization interest or dividends on the investment, and of the expense of building new lines to new gas fields. Applying the schedule of rates prescribed by the Corporation Commission in its said Order No. 1886, to the business done by complainant's production and transmission system during said year ending October 31, 1921, would have brought complainant's production and transmission properties a gross income of \$4,113,501.90, and would have left complainant only the sum of \$299,079.81, as a net income with which to pay interest or dividends on the investment, to take care of depreciation, and amortize the investment against the time when the supply of gas available for said properties will be exhausted.

The business of producing, transporting and furnishing natural gas for public use is the most hazardous of all kinds of public service, for the reason that it combines a mining venture with a public service. There is no natural limitation to the life of any other public utility, inasmuch as they all manufacture the basic element of their service, except water companies, and the supply of water is constantly replenished by nature. Natural gas, however, cannot be made by man, is made only by nature, and when once exhausted can never be re-created; the supply is limited, and when exhausted the natural gas company's business is at an end, and its investment becomes worthless except for what it will bring as junk.

For said reason an investment made in the natural gas business is in greater jeopardy than that made in any other public utility, and the return thereon ought to be commensurately greater. Ten per cent per annum is as little as persons who have invested their money in banking, merchandising and other such forms of business in Oklahoma expect to receive thereon, and the natural gas company is entitled to an earning of ten per cent upon its investment, over and above the necessary earnings for paying its expenses, taking care of depreciation and amortizing its property. On November 16, 1921, the Corporation Commission of Oklahoma recognized this fact, and held that the Southwestern Oklahoma Gas & Fuel Company, which served the cities of Duncan and Marlow, Oklahoma, and which purchases its gas from the production and transmission properties of the Oklahoma Natural Gas Company, was entitled to an earning of ten per cent for interest or dividends, upon the investment, and an additional earning of ten per cent for depreciation, in view of the hazardous nature of the business. A true and correct copy of said order of said Corporation Commission is hereto attached marked "Exhibit A" and made a part hereof. This affiant further says that the said Southwestern Oklahoma Gas & Fuel Company, which serves the said cities of Duncan and Marlow, acquires its entire supply of gas from the

Oklahoma Natural Gas Company; and that the business of said Southwestern Oklahoma Gas & Fuel Company cannot be more hazardous than is the business of the Oklahoma Natural Gas Company, for the reason that that company's supply of gas will not fail until the supply fails the Oklahoma Natural Gas Company.

Natural gas contains about twice the heating units of artificial gas, and on the basis of its actual value, as compared with artificial gas, is intrinsically worth to the domestic consumer not less than \$2.00 a thousand.

The Oklahoma Natural Gas Company is required to purchase its gas in the northern and northeastern portions of Oklahoma in competition with the Kansas Natural Gas Company, the Empire Gas Company and the Wichita Pipe Line Company, which purchase gas in Oklahoma and transport the same to Kansas and Missouri, and which said companies receive for their gas in Kansas and Missouri, as this affiant is informed and believes, distributing rates ranging from 56 cents to \$1.00 per thousand. The Oklahoma Natural Gas Company is also required to purchase its gas in the gas fields in southern Oklahoma in competition with the Lone Star Gas Company, which buys gas in that field, and transports the same to Texas, no further than the Oklahoma Natural Gas Company is required to transport its gas, and which company receives in Texas a net domestic rate therefor of 67½ cents per thousand. Attached hereto, marked "Exhibit B" is a true copy of a contract entered into between the City of Ft. Worth and the Ft. Worth Gas Company, which obtains its gas from the Lone Star Gas Company, which said copy of said contract was furnished this complainant by the Corporation Commission of Oklahoma. The same rates prevail for gas in Dallas, Texas, as are shown by this contract with respect to Ft. Worth.

Illustrative of the uncertainty of the natural gas business, and the short life of a gas field, affiant recalls that in 1920 John C. Keys, who furnished gas in the City of Lawton, and who had what was thought to be a very large and productive gas field, had a rate case before the Corporation Commission, in which he contended for an allowance for amortization sufficient to amortize his property in seven or eight years, which was refused by the Corporation Commission. The said gas field of the said John C. Keys is now practically exhausted, and his company, which furnished gas in the City of Lawton is now in the hands of a receiver. Affiant attaches hereto, and marks as "Exhibit C," copy of a report upon the gas field from which said Keys has been obtaining his gas, made to the Corporation Commission of Oklahoma by J. W. Duval, Gas Engineer of said Corporation Commission, and J. G. Adams, Conservation Officer of said Commission.

The Oklahoma Natural Gas Company's production and transmission expenses and taxes in its Claremore system for the year beginning November 1, 1920, and ending October 31, 1921, amounted to \$36,341.64. Its distributing expenses and taxes for the same year amounted to \$20,469.26, making a total expense of \$56,770.90.

Its gross receipts from the sale of gas at the rates prescribed by said Corporation Commission and in force at the City of Claremore were \$53,933.06, leaving the Oklahoma Natural Gas Company an actual deficit of \$2,837.84, and with nothing with which to pay interest or dividends on the investment, and with which to take care of depreciation and amortization and correct the leakage in said plant.

The Oklahoma Natural Gas Company's production and transmission expenses in the Inola system for the year ending October 31, 1921, amounted to \$3,561.80, and its distributing expenses and taxes for said year amounted to \$2,182.28, making a total expense in furnishing said gas of \$5,744.08.

Its gross income from the sale of gas at the rates prescribed by said Corporation Commission and in effect in said town of Inola were \$3,698, leaving the Oklahoma Natural Gas Company an actual deficit of \$2,046.08 from its operations in said town, and with nothing with which to pay interest or dividends on the investment and with which to take care of depreciation and amortization and to correct the leakage in said plant.

The Oklahoma Natural Gas Company runs a portion of the natural gas which it sells through gasoline absorption plants which it owns and which are located in the towns of Kellyville, Stroud, 191 Sumpter, and Shamrock. The gas is run through said plants for two purposes, first, for the purpose of drying and cleaning the gas so that it will pass through the lines freely, and removing impurities, moisture and dirt therefrom, thereby causing a more even flow of gas through the lines, and better combustion thereof; and second, for the purpose of acquiring gasoline which may be extracted from said gas. The Oklahoma Natural Gas Company has an investment in excess of \$350,000 in its said gasoline plants. For the year ending December 31, 1920, the Oklahoma Natural Gas Company's net profit upon the operations of said plants was \$48,985.65; and for the nine months of the year 1921 ending September 30, 1921, the Oklahoma Natural Gas Company suffered a net deficit in operating said plants of \$2,609.46.

The Oklahoma Natural Gas Company's application for an increase in its rates in Claremore and Inola has not been heard, and has not been set for hearing.

Further affiant saith not.

R. C. SHARP.

Subscribed and sworn to before me this 12th day of December, 1921.

[Seal of Emma Seberger, Notary Public, Oklahoma County, Oklahoma.]

EMMA SEBERGER,  
*Notary Public Within and for  
Oklahoma County, State of Oklahoma.*

My Commission Expires Jan. 12, 1925.

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## EXHIBIT A.

Before the Corporation Commission of the State of Oklahoma.

Cause No. 4329. Order No. 1955.

In re Application of THE SOUTHWESTERN OKLAHOMA GAS & FUEL COMPANY and THE WESTERN OKLAHOMA GAS & FUEL COMPANY for Increase in Gas Rates in the Cities of Duncan and Marlow, Oklahoma.

## EXHIBIT A.

*Findings of Fact, Opinion, and Order.*

By the COMMISSION:

On July 21, 1921, the Southwestern Oklahoma Gas & Fuel Company and the Western Oklahoma Gas & Fuel Company filed a joint application for permission to increase the rates charged for gas distributed in the cities of Duncan and Marlow, Oklahoma. The case was set down for hearing on August 2, 1921, was partially heard on that date and continued until August 16th when the hearing was concluded and the case closed.

Up to within a recent period the Southwestern Oklahoma Gas & Fuel Company has been producing and supplying to the Western Oklahoma Gas & Fuel Company the gas which the latter distributed in the cities of Duncan and Marlow. The gas production of the Southwestern Oklahoma Gas & Fuel Company became insufficient to meet the demands of Duncan and Marlow and a contract was then consummated with the Oklahoma Natural Gas Company to obtain the necessary gas from its pipe line which passes within approximately three and one half miles of each of the said cities. In order to transport the gas from the pipe line to the said cities, the Southwestern Oklahoma Gas & Fuel Company constructed two four inch connecting lines from the mains of the Oklahoma Natural Gas Company to the gate ways of the two cities. The contract price to be paid to the Oklahoma Natural Gas Company was  $22\frac{1}{2}\text{¢}$  per thousand cubic feet. This was paid by the Southwestern Oklahoma Gas & Fuel Company which then made an additional charge of  $5\text{¢}$  per thousand cubic feet for transporting the gas from the mains of the Oklahoma Natural Gas Company to the borders of the said cities where it was delivered to the Western Oklahoma Gas & Fuel Company for distribution. The said Western Oklahoma Gas & Fuel Company paid to the Southwestern Oklahoma Gas & Fuel Company the total of  $27\frac{1}{2}\text{¢}$  per thousand cubic feet at the said city borders or gate ways and assumed the entire loss in transportation from the mains of the Oklahoma Natural Gas Company to the city gate ways as well as the loss in distribution.

While the Southwestern Oklahoma Gas & Fuel Company and the Western Oklahoma Gas & Fuel Company bear different corporate

names they are in fact controlled by the same interests and should be considered as one company in arriving at the amount of capital invested in facilities used and useful in distributing gas in the said cities of Duncan and Marlow and will be so considered in this behalf.

In Cause No. 4023, by its order No. 1886, effective July first, 1921, this Commission fixed a rate of 25¢ per thousand cubic feet for gas delivered by the Oklahoma Natural Gas Company to distributing utilities for domestic consumption and 20¢ per thousand cubic feet for gas so delivered for industrial consumption. It is alleged by the applicant herein that since the date of said order they have been paying the Oklahoma Natural Gas Company accordingly.

The properties of the Western Oklahoma Gas & Fuel Company used and useful in the distribution of gas in the cities of Duncan and Marlow were appraised by the Commission's engineer Mr. M. E. Durham, as of August 31, 1919, and the total value found to be \$81,377.54 without making any allowance or deduction for depreciation, although the depreciated value of the property was shown to be approximately \$20,000.00 less than the original cost which would leave the actual value at August 31, 1919, approximately \$61,000.00. Since the date upon which the hearing was concluded however, inquiry and investigation have disclosed that Mr. Durham's appraisal did not take into account the cost of laying the pipe but only the actual cost of the pipe itself. It has been since found that the reasonable and fair cost of the labor of laying the pipe, based upon the general experience during the period that this pipe was laid, amounted to \$23,277.01, which added to the amount originally found by the said engineer, that is \$81,377.54, would make the correct value as of August 31, 1919, \$104,654.55. But in his appraisal the engineer included materials and supplies on hand in the amount of \$6,142.92; deducting this from the original cost of the property, including the labor, leaves \$98,511.63. The applicant alleged that between August 31, 1919, and July 1, 1921, it expended an additional amount in additions and betterments aggregating \$14,738.23. It further alleges that the cost of the two pipe lines connecting the mains of the Oklahoma Natural Gas Company with the distributing systems of the Western Oklahoma Gas & Fuel Company at the city gates of Duncan and Marlow amounted to \$35,891.49 and the Commission finds that this amount is approximately what the installation of such lines should have reasonably cost at the date of their investment. Adding the two amounts last named, that is \$14,738.23 and \$35,891.48 to the value of the property as of August 31, 1919, as detailed above, that is \$98,511.63, makes a total value at June 30, 1921, of \$149,141.34.

It is found that no allowances were made in those figures for such items as engineering and superintendence, taxes, and insurance, interest during construction, casualties during construction, legal expenses during construction, going concern value and working capital which are usually designated as overheads and intangibles. These elements are always present and figure materially in the total cost of placing an enterprise of this kind in actual workable condi-

tion. The amount reasonably necessary for this purpose has been found to be approximately 20 per cent of the physical cost of the labor and materials entering into the construction of a gas utility. Addint 20 per cent of the amount found to have been invested in the materials and labor used and useful in the distribution of gas in the said cities of Duncan and Marlow, that is, \$149,141.34, amounts to \$29,828.27 and makes a grand total of \$178,969.61 which amount is hereby adopted as representing the necessary investment in these utilities.

It has been shown that these utilities have enjoyed but scant prosperity during the term of their existence and that they have not been able to earn sufficient to pay a fair and reasonable return upon the amount of capital invested, and nothing whatever for depreciation and wear and tear on the property. In view of this the Commission is of the opinion that a depreciation reserve from this time forward amounting to ten per cent will be just and reasonable and that in view of the hazardous nature of the business a return on the capital invested of a like sum, that is, 10 per cent, is just and fair.

194 For the purpose of this order, the Commission will consider the operating results of these utilities for the first seven months from January to July, inclusive, of the current year which it considers a fairly representative period.

Seven months' return and depreciation at the rate of 20 per cent per annum on the investment of \$178,969.61 amounts to \$20,880.93. The operating expenses and taxes for the said seven months as herein adopted amount to \$16,925.22. The gas sales during the said seven months amounted to 133,676 thousand cubic feet. Add to that ten per cent for loss in transmission and distribution makes the gas necessary to purchase 148,527 thousand cubic fee. The amount of industrial gas delivered by the applicant is trivial and need not be considered, so that all of the gas which it purchases it will have to pay for at the domestic rate of 25¢ per thousand cubic feet. This amounts to \$37,131.75 and makes a total revenue, which it will be necessary for the applicant to earn, of \$74,937.90. The sale of all of the gas which it delivered during the said period of seven months, that is 133,676 thousand cubic feet at 55¢ per thousand cubic feet amounts to \$73,521.80, which deducted from the amount which the applicant should be allowed to earn leaves a deficit of \$1,416.10.

Wherefore the Commission being fully informed in the premises, it is ordered that on and after November 1, 1921, the Western Oklahoma Gas & Fuel Company shall charge for all gas delivered by it in the cities of Duncan and Marlow, Oklahoma, as follows:

First 150 M cu. ft. 55¢ per M cu. ft.

Next 350 M cu. ft. 45¢ per M cu. ft.

All over 500 M cu. ft. 35¢ per M cu. ft.

These are cash rates and are contingent upon the payment of bills within ten days after rendition. On all bills not so paid an additional charge of 2¢ per thousand cubic feet will be made.

It is the further finding of the Commission that heretofore it has been the practice of the applicant to furnish gas to certain city institutions in Duncan and Marlow free of charge. It is ordered that this practice be discontinued and that all gas delivered for consumption in the said cities be charged for at the rates above prescribed.

Done at Oklahoma City on this the 16th day of November, 1921.

(Signed) CORPORATION COMMISSION OF  
OKLAHOMA,  
CAMPBELL RUSSELL,  
*Chairman.*  
ART L. WALKER,  
*Commissioner.*  
E. R. HUGHES,  
*Commissioner.*

Attest:  
G. F. SMITH,  
*Secretary.*

195 EXHIBIT B.

Office of Corporation Commission of Oklahoma,  
Oklahoma City, Okla.

August 20th, 1920.

Judge D. A. Richardson,  
512 American National Bank Bldg.,  
Oklahoma City, Oklahoma.

DEAR SIR:

Herewith enclosed copy of Contract between the City of Ft. Worth and the Fort Worth Gas Company.

Yours truly,  
(Signed) ART L. WALKER,  
*Chairman.*

A. L. W./C.

196 Resolved that the following:

Whereas, The Board of Commissioners of the City of Fort Worth have concluded and agreed between the said City and the Fort Worth Gas Company, with respect to the matters hereinafter referred to, and are desirous that said agreement shall be put in due and legal form, an become the act of the Board of Commissioners, and binding, as well, in the Fort Worth Gas Company. Therefore,

Be it ordained, By the Board of Commissioners of the City of Fort Worth, That the Mayor and City Secretary of the City of Fort Worth are hereby empowered and directed to execute in due and legal form and manner, the following contract, which has been agreed upon between the parties, to-wit:

THE STATE OF TEXAS,  
*County of Tarrant:*

This memorandum of agreement, Made and entered into on this 9th day of June A. D., 1920, by and between The City of Fort Worth, a municipal corporation, party of the first part, and the Fort Worth Gas Company, a corporation, party of the second part, witnesseth:

1.

It is agreed that the Fort Worth Gas Company, party of the second part, subject to the terms and conditions herein set forth, are hereby authorized to charge the sum of Seventy-Five cents gross per one thousand cubic feet of natural gas furnished to customers, for domestic use, less the discount of ten per cent for the prompt payment of monthly bills, now prevailing under the rules of said Fort Worth Gas Company, making a net rate of Sixty-Seven and one-half ( $\$.67\frac{1}{2}$ ) Cents per thousand cubic feet, for domestic use, which rate shall apply for a period of twelve months from and after the date when connection with the mains of the Fort Worth Gas Company has been made and completed with the West Texas Trunk line of the Lone Star Gas Company, and natural gas has been actually delivered into the distributing mains of the Fort Worth Gas Company through such connection from such West Texas line.

From and after such twelve month period, the base of charges shall be said gross sum of Seventy-Five Cents plus three cents for every additional one cent over the average sum of five cents per thousand cubic feet paid for natural gas in the Field by the Lone Star Gas Company, less the discount of ten per cent; Provided, That in no event shall the net cost to the consumers, making prompt payment under the existing rules of the party of the second part, be more than Seventy-Five Cents per thousand cubic feet, for domestic use, for the period of two years after the expiration of the above initial one year period.

2.

Except as herein specifically provided, all existing contracts between the Fort Worth Gas Company and The City of Fort Worth, and all ordinances regulating the supply and distribution of natural gas to the inhabitants of the City of Fort Worth, shall remain in full force and effect.

3.

The City of Fort Worth here now agrees, in consideration of the premises, that it will, in due season, pass, enact and adopt any and all ordinances or regulations, in legal form, as may be deemed necessary or expedient to carry out the terms of this contract, or to further grant or concede to the said party of the second part the rights hereby agreed to be granted to it, or its assigns, as well as for the

protection and preservation of its own rights and policies, as herein set forth.

In testimony whereof, The parties hereto have hereunto set their hands the day and date first above written.

THE CITY OF FORT WORTH,  
By W. D. DAVIS,  
*Mayor.*

Attest:

[SEAL.] JAMES LISTON, JR.,  
*City Secretary.*

Approved as to form.

T. J. POWELL,  
*Corporation Counsel.*

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EXHIBIT C.

November 14th, 1921.

Corporation Commission,  
State of Oklahoma,  
Oklahoma City, Oklahoma.

GENTLEMEN:

Investigation of Gas Situation at Lawton, Oklahoma.

An investigation of the gas situation at Lawton, Oklahoma has been made. The following interests and representatives collaborated in this investigation.

City of Lawton, C. E. Douglas, City Manager.

" " S. I. McIlhoes, City Att'y.

" " Dick Jones, City Commissioner.

" " Harry Hanbury.

" " L. E. Goodrich.

Lawton Gas & Electric Co., Ed. W. Ownes.

Corporation Commission, John G. Adams, Conservation Of.

Corporation Commission, J. W. Duvall, Gas Engineer.

This investigation covered the testing of gas wells belonging to the Keys Corporation, investigation of the possible gas supply in the immediate vicinity of the pipe line, the lost and unaccounted for gas in the pipe line and distribution system, the maximum demand of the City of Lawton, the pressure required at the receiving end of the pipe line to meet this maximum demand, etc.

The Keys Corporation owns some twenty-two gas wells, in what is known as the Walters Field, located about twenty miles Southeast of Lawton. Of the twenty-two wells, fourteen are dead; Two of which are mudded in and two of which are plugged by order of the Commission. Of the remaining eight, three are producing oil; two are producing a little gas, but at a pressure too low to be connected to the pipe line; and three are connected to the pipe line serving the City of Lawton.

The Keys Corporation also purchases gas from two wells located in this field; one of which is connected to the pipe line, and the other one because of low pressure is connected to the field line.

The test on the four wells connected to the pipe line serving the City of Lawton is as follows:

Name.	Location, sec., T. S. and R. W.	Open flow capacity, M cu. ft.	Rock pres- sure, lbs. per sq. in.	Remarks.
Gross #4....	26-1-10	1,472	37	Dry Gas.
Stat-on #1...	25-1-10	1,700	80	Making Water.
Jos. Tilley ...	23-1-10	475	110	Dry Gas.
W.H. Smith #1	22-1-10	376	50	Dry Gas.

The combined open flow capacity of these four wells is a trifle over 4,000,000 cubic feet per twenty-four hours, and the rock pressure ranges from 37 to 110 pounds per square inch. Unfortunately, the well capacities that are generally reported, are the open flow capacities when the wells are discharging freely into the atmosphere. These open flow capacities are very much larger than the actual delivering capacities under operating conditions when the wells are feeding into a pipe line under a back pressure of several pounds.

The combined service capacity of these wells when feeding into the pipe line under a back pressure of 20 pounds, which means a somewhat higher pressure at the wells, is in the neighborhood of 1,500,000 cubic feet per twenty-four hours. As the maximum twenty-four hour demand of the City of Lawton requires an input into the pipe line of approximately 3,000,000 cubic feet, and as the pipe line consists of 14.75 miles of 8" pipe, it requires a pressure of 60 pounds at the receiving end of the pipe line to deliver this amount of gas, less the leakage in transmission at a discharge pressure of 20 pounds at the inlet of the distribution system, which pressure is required in the distribution system at Lawton to render adequate service during the peak demand.

On Wednesday, November the 9th the input into the pipe line was in the neighborhood of 1,250,000 cubic feet and the pressure at the receiving end of the pipe line was 20 pounds during the peak load and 30 pounds during the off peak load. This 20 pound pressure at the receiving end of the pipe line gave a discharge pressure of 5 pounds at the inlet of the distribution system. As the distribution system is a medium pressure system and requires approximately 20 pounds pressure at its inlet to render adequate service, it is very apparent that on this date, the service was far from adequate. The pressure at the Gas Company's office during the peak load on the above date was 1 pound. With a pressure of 1 pound at the office, the pressure at the low pressure points in the system, in all probability would be zero.

An investigation was made as to the available gas supply within a reasonable distance of the pipe line. This investigation disclosed no supply of sufficient volume and pressure, within a distance of nine miles, except the pipe line of the Oklahoma Natural Gas Com-

pany and the one of the Lone Star Gas Company. The Oklahoma Natural Gas Company's pipe line is approximately four miles distant, and the Lone Star Gas Company's pipe line is connected to the Keys pipe line at the present time. On the day of the inspection, the pressure existing on the Lone Star Gas Company's line at the tie-in was 125 pounds.

The distribution system consists of some 13.56 miles of 3" equivalent main, and the pipe line consists of some 39.35 line of 3" equivalent main, making a total of 52.91 miles of 3" equivalent main. The Company's record shows an input into the pipe line of 224,003,000 cubic feet during the last eight months, and a sales of 181,674,000 cubic feet during the same period of time. The lost and unaccounted for gas, therefore, during these eight months amounted to 42,329,000 cubic feet, or 19% of the gas delivered into the pipe line. This amount represents the entire loss on the pipe line and distribution system for a period of eight months. Based on these figures, the lost and unaccounted for gas, for a period of one year will be in the neighborhood of 63,500,000 cubic feet, which amount represents a loss of 1,200,000 cubic feet per year, per mile of 3" equivalent main. The above figures include the consumption of some fifteen farmer lines which consumption is not measured at the present time.

Exhibit "A" attached to this report gives the names of the gas wells owned by the Keys Corporation together with their location and their condition at the present time.

Exhibit "B" gives the output of the four wells connected to the pipe line at the present time, together with the output of four other wells that have been disconnected during the past eight months.

Respectfully submitted,

J. W. DUVALL,  
*Gas Engineer.*  
J. G. ADAMS,  
*Conservation Officer.*

200	Name.	Location.	Remarks.
	E. Q. Smith, No. ....	22-1-10	Dead.*
	W. H. Smith, No. 1. ....	22-1-10	In Line.*
	Anderson No. ....	23-1-10	Dead.*
	Tilley, No. 1. ....	23-1-10	Dead and mudded in.*
	Tilley, No. 2. ....	23-1-10	Dead.
	Tilley, No. 3. ....	23-1-10	Little Gas.
	Reiser, No. 1. ....	24-1-10	Dead.
	Staton, No. 1. ....	25-1-10	In Line.*
	Schwalbe, No. 1. ....	26-1-10	Dead.
	Schwalbe, No. 3. ....	26-1-10	Dead and Plugged.
	Gross, No. 1. ....	26-1-10	Dead and Plugged.
	Gross, No. 2. ....	26-1-10	Dead.*
	Gross, No. 4. ....	26-1-10	In Line.*
	Gross, No. 5. ....	26-1-10	Dead and mudded in.
	Gross, No. 6. ....	26-1-10	Dead.
	Ellis, No. 1. ....	27-1-10	Dead.*
	J. M. Boldman, No. 2. ....	28-1-10	Dead.
	Chambers, No. 1. ....	35-1-10	Now Oil.
	W. D. Smith, No. 1. ....	34-1-10	Now Oil.
	Sanders, No. 1. ....	3-2-10	Now Oil.
	Sanders, No. 2. ....	3-2-10	Little Gas.
	Sanders, No. 3. ....	3-2-10	Dead.

## Gas purchased from:

Jos. Tilley	23-1-10	In Line.*
Victor Oil Co. (No. 1 Lawler)	33-1-10	Now Oil.
" " " " "	33-1-10	In Field Line.

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## EXHIBIT B.

Month.	J. O. Gross, No. 4, M cu. ft.	Station No. 1, M cu. ft.	W. H. Smith, No. 1, M cu. ft.	Tilley, M cu. ft.
March	13,035	15,673	2,850	
April	13,805	20,431	6,599	
May	13,393	18,900	8,047	
June	9,689	14,653	6,514	
July	11,489	15,310	6,799	
August	8,543	13,063	4,221	3,279
September	9,613	12,675	3,025	2,080
October	10,896	12,465	2,608	4,545

\*Tested on this investigation. The remaining wells have been tested and reported by Mr. Adams in the past.

	Gross			
	No. 2.	J. M. Boldmen #2.	Tilley No. 3.	Schwable #3.
March ....	2131	482	6015	7810
April ....	1887	13	4192	198
May .....	416	Dead and discon-	36	Dead and discon-
June .....	152	nected on the 21st	29	nected on April 21st
July .....	212	of April.	369	Plugged by order
August ...	11		17	Commission.
Sept. ....	99		Disconnected on	
Oct. ....	52		August 20th.	
Disconnected on				
Oct. 10th.				

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*Pipe Line.*

8" 77,910..... 2,776 39.35 Miles of 3" Equivalent Main.

## Distribution system:

4"	5,720.....	7,627
3"	6,020.....	6,020
2"	71,091.....	27,394
2"	1,502.....	1,001
1½"	19,077.....	9,539

71,581 13.56 Miles 3" Equivalent Main.

52.91 Miles 3" Equivalent Main.

## Delivery to pipe line:

	M cu. ft.	Sales
March .....	42,144	42,731
April .....	38,797	35,612
May .....	31,214	31,721
June .....	21,251	20,967
July .....	28,212	22,035
Aug. ....	21,465	9,011
Sept. ....	17,258	7,954
Oct. ....	23,662	11,643
	<u>224,003</u>	<u>181,574</u>

Endorsed: Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

203 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Eq.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit of H. E. Musson.*

STATE OF OKLAHOMA,  
Oklahoma County, ss:

H. E. Musson, being first duly sworn, on his oath deposes and says: My name is H. E. Musson. I reside in Oklahoma City, Oklahoma, and am forty-four years of age. I am a member of the firm of Musson and Gayle, engineers and accountants. I have been in the business of an appraisal engineer for seven years, and for fifteen years prior to that time I was in the business of a construction engineer. From November 1913 until November 1917 I was in the employment of the Corporation Commission of the State of Oklahoma and was engineer in charge of the telephone, gas and electric department of said Corporation Commission. A part of my duties with said Corporation Commission was to make inventories and appraisals of telephone, electric light and natural and artificial gas plants. I resigned from the Corporation Commission of Oklahoma in November, 1917, and became Vice-President and General Manager of the Henryetta Gas Company, the Henryetta Public Service Company and the Belleview Oil & Gas Company, and held that position until November, 1918. I thereupon resigned that position  
204 and opened an office in Oklahoma City as a consulting and appraisal engineer, and I have been constantly practicing my said profession ever since. Since I resigned from the Corporation Commission of Oklahoma I have been employed by said Commission specially to make inventories and appraisals of properties; and I have made numerous appraisals of natural gas, electric light and other public utility properties for other persons and corporations.

I made an inventory and appraisal of all the property of the Oklahoma Natural Gas Company, completing the same on October 31, 1919. I made the inventories and appraisals upon two different bases, one upon the basis of the original cost of said property used and useful in rendering the Oklahoma Natural's public service, and the other upon the basis of the reproduction cost of said property as of said October 31, 1919.

I found the original cost of the production and transmission properties of the Oklahoma Natural Gas Company, exclusive of Claremore, Inola and Ramona, and exclusive of going concern value and working capital, and without depreciation, to be \$14,281,015.48.

I found the original cost of the Oklahoma Natural's distributing systems, exclusive of going concern value and working capital, and without depreciation, to be as follows:

Tulsa .....	\$1,117,882.52
Turley .....	1,707.67
Wellston .....	11,212.55
Arcadia .....	5,036.40
Chandler .....	48,981.95
Coweta .....	27,022.81
Davenport .....	8,882.36
Dawson .....	9,685.87
Deer Creek .....	3,884.54
Depew .....	8,541.29
Edmond .....	42,475.18
Haskell .....	36,962.67
Hunter .....	9,317.27
Kellyville .....	6,585.71
Lamont .....	13,838.44
Luther .....	5,669.38
Midlothian .....	2,323.30
Meeker .....	7,865.96
Nardin .....	4,479.25
Peckman .....	3,720.29
Pond Creek .....	18,860.19
Porter .....	11,707.24
Red Fork .....	22,717.03
Sapulpa .....	226,475.32
Shamrock .....	18,876.38
205 Stroud .....	29,137.45
Inola .....	19,022.86
Claremore, including both production and transmission and distribution systems .....	467,405.28

The foregoing included nothing for going concern value and for working capital and the cost of establishing the business, and also included no additions made to said production and transmission property or to any of said distributing plants after October 31, 1919.

A statement of the said values of said properties, excepting Claremore, Inola and Ramona properties, on the basis of original cost, excluding concern value, working capital and the cost of establishing the business, and excluding all additions made after October 31, 1919, is hereto attached, marked "Exhibit A" and made a part hereof, and the inventories of the Claremore and Inola properties upon the basis of original cost are hereto annexed and marked "Musson's Exhibit 5" and "Musson's Exhibit 3" respectively.

I found the value of said property upon the basis of replacement cost as of October 31, 1919, exclusive of going concern value, working capital and the cost of establishing the business, to be as follows:

Production and transmission properties, excluding, however, Claremore, Inola and Ramona .....	\$29,812,750.75
Tulsa .....	1,890,442.25
Turley .....	3,218.89
Wellston .....	19,864.87
Arcadia .....	8,667.31
Chandler .....	79,425.30
Coweta .....	47,969.22
Davenport .....	14,694.43
Dawson .....	19,767.10
Deer Creek .....	8,114.76
Depew .....	13,567.24
Edmond .....	71,062.51
Haskell .....	75,196.15
Hunter .....	16,584.53
Kellyville .....	11,105.60
Lamont .....	26,150.24
Luther .....	9,805.06
Midlothian .....	3,692.67
Meeker .....	13,579.90
Nardin .....	6,967.52
Peckham .....	6,372.34
Pond Creek .....	32,849.61
Porter .....	18,883.13
Red Fork .....	50,433.07
Sapulpa .....	426,703.33
Shamrock .....	32,292.18
Stroud .....	51,444.92
Inola .....	30,702.92
206 Claremore, including production, transmission and distribution systems .....	894,049.71

A statement of said values of said production and transmission properties and of said distributing properties, excepting, however, Claremore, Inola and Ramona, is hereto attached, marked "Exhibit B" and made a part hereof; and the inventories of the said Claremore and Inola properties, upon the basis of replacement cost, are annexed hereto, marked respectively "Musson's Exhibit 9" and "Musson's Exhibit 7."

The foregoing figures include nothing for going concern value, working capital, or cost of establishing business, and are without depreciation, and also include no additions made to any of said properties after October 31, 1919.

I have been familiar with the properties of the Oklahoma Natural Gas Company since November 1913. In my judgment the going concern value of the said several properties of said Oklahoma Natural Gas Company, that is to say, the value of said properties as a

going concern, with all of the various units assembled, installed, co-ordinated, and in operation as a going concern and with an established business, is not less than 15% more than the aggregate of the values of the various units comprising said property but considered separately.

The present replacement value of the properties of the Oklahoma Natural Gas Company, considering the said properties as they existed on October 31, 1919, and not considering any additions which have been made since, while not so large as the replacement value on October 31, 1919, is nevertheless about 30% greater than was the original cost of said properties.

On October 31, 1919, considering the additions that had been made to said properties from time to time during the preceding years, and that a large portion of same was new construction, the depreciation on same amounting to not more than 18%.

The present fair value of the production and transmission property which the Oklahoma Natural Gas Company owned on October 31, 1919, exclusive of Claremore, Inola and Ramona, considering going concern value and working capital, and deducting depreciation, is not less than \$19,000,000; and this does not include any additions made since October 31, 1919.

I know that the Oklahoma Natural Gas Company has been required to and has made very extensive and expensive additions to its property each year since and including the year 1917, in order to be able to get and furnish gas to those it was obligated to serve.

During the time that I was with the Corporation Commission, and since, I have very carefully observed the gas developments in the State of Oklahoma, and the life of the gas fields in the State of Oklahoma and the depletion thereof, and the necessity of building new lines to new gas fields, and from my observation of said matters, my judgment is that a supply of natural gas in worth-while quantities will not be available to the Oklahoma Natural Gas Company for a longer period than eight years from this date; and that it is entitled to amortize its said investment upon that basis.

I further state that the business of furnishing natural gas, combining as it does, a public service with a mining venture, and considering the fact that natural gas fields are exhaustible, and are short-lived in Oklahoma, is the most hazardous and risky in its nature of all kinds of public service in which one may enter; and that investments made for the purpose of entering the public service by furnishing natural gas to the public are in greater jeopardy than investments made in any other class of public service, and run a greater risk of loss.

In the inventory and appraisals made by this affiant this affiant inventoried the warehouse stock which the Oklahoma Natural Gas Company carried in Tulsa for its production and transmission properties, and the same inventoried \$609,404.32. This was placed in said inventory under the heading "Tulsa," because the same was situated in Tulsa. Another such warehouse was situated at Cement, Oklahoma, and the stock in it inventoried \$65,082.36. A other such warehouse was situated at Blackwell and the stock therein in-

ventoried \$8,604.18. In addition to that the Oklahoma Natural Gas Company owned land in Enid costing \$1,400.00, and 208 buildings thereon costing \$3,536.92, which were used and useful in the Enid transmission and production system. When affiant made up his inventory and appraisal, he listed said warehouse stock in Tulsa under said heading as above stated, and did not place the same in complainant's production and transmission property. He also listed the said property in Enid, Blackwell and Cement as being in those towns, although the Oklahoma Natural Gas Company owned no distributing system in either of those towns and received no revenue from either of those towns. The Corporation Commission in its order No. 1886 deducted the warehouse stock in Tulsa from the value of the Tulsa distributing system, but did not add either that warehouse stock, or the said property in Enid, Blackwell and Cement, to the production and transmission property of the Oklahoma Natural Gas Company; and the result was that in the order made by said Corporation Commission property of the Oklahoma Natural Gas Company used and useful in its production and transmission system, recently acquired, and costing \$688,027.78, was omitted altogether by said Commission in fixing the Oklahoma Natural Gas Company's rate base.

I further state that all of the property inventoried by me, the values of which have been given above, was property used and useful by the Oklahoma Natural Gas Company in rendering its said service to the public; and all of it was used and useful in procuring, transmitting and distributing gas to the public.

Natural gas contains about twice the heating units of artificial gas, and upon the basis of its actual value as compared with artificial gas is worth to the domestic consumer not less than two dollars a thousand cubic feet.

H. E. MUSSON.

Subscribed and sworn to before me this 9th day of December, 1921.

[SEAL.]

EMMA SEBERGER,  
*Notary Public.*

My commission expires Jan. 12, 1925.

## EXHIBIT A.

Oklahoma Natural Gas Company,  
Tulsa, Oklahoma.

*Index.*

Page 1.....	Tulsa.
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21.....	Pond Creek.
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26.....	Stroud.
27.....	Gas Pipe Lines.

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System: Tulsa Plant.

GU— 1. Organization .....	\$4,483.49
3. Land .....	16,950.00
4. Buildings .....	48,902.23
16. Mains .....	503,683.55
17. Gas Services .....	92,538.96
18. Gas Meter Installations .....	15,456.18
19. Gas Meters .....	150,396.87
20. Gas Regulators .....	8,672.74
23. Gas Tools .....	2,031.34
24. Gas Laboratory Equipment .....	846.55
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	142,730.72
27. Engineering & Superintendence .....	40,982.53
28. Law Expenditures During Construction ..	8,196.51
29. Injuries During Construction .....	14,425.85
30. Interest During Construction .....	42,995.48
31. Miscellaneous Construction Expenditures ..	24,589.52
Total .....	<hr/> \$1,117,882.52

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## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Original Cost.

## Distribution System: Turley Plant.

GU—	1. Organization .....	\$8.07
	3. Land .....	.....
	4. Buildings .....	56.21
	16. Mains .....	1,160.72
	17. Gas Services .....	183.25
	18. Gas Meter Installations .....	.....
	19. Gas Meters .....	.....
	20. Gas Regulators .....	75.01
	23. Gas Tools .....	.....
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence .....	73.76
	28. Law Expenditures During Construction ..	14.75
	29. Injuries During Construction .....	25.96
	30. Interest During Construction .....	65.68
	31. Miscellaneous Construction Expenditures ..	44.26
	<b>Total .....</b>	<b>1,707.67</b>

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System: Wellston Plant.

GU— 1. Organization .....	\$52.74
3. Land .....	50.00
4. Buildings .....	95.43
16. Mains .....	5,951.46
17. Gas Services .....	1,583.42
18. Gas Meter Installations .....	168.92
19. Gas Meters .....	1,486.18
20. Gas Regulators .....	355.76
23. Gas Tools .....	.....
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	.....
27. Engineering & Superintendence .....	482.06
28. Law Expenditures During Construction ..	96.41
29. Injuries During Construction .....	169.68
30. Interest During Construction .....	431.25
31. Miscellaneous Construction Expenditures	289.24
Total .....	<hr/> 11,212.55

214

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System: Arcadia Plant.

GU—	1. Organization .....	\$23.65
	3. Land .....	30.00
	4. Buildings .....	78.57
	16. Mains .....	2,661.77
	17. Gas Services .....	522.14
	18. Gas Meter Installations .....	80.34
	19. Gas Meters .....	980.98
	20. Gas Regulators .....	.....
	23. Gas Tools .....	.....
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence .....	216.19
	28. Law Expenditures During Construction ..	43.24
	29. Injuries During Construction .....	76.10
	30. Interest During Construction .....	193.71
	31. Miscellaneous Construction Expenditures	129.71
	Total .....	<hr/> \$5,036.40

15

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System, Chandler Plant.

GU— 1. Organization .....	\$185.05
3. Land .....	225.00
4. Buildings .....	200.81
16. Mains .....	19,772.38
17. Gas Services.....	5,786.64
18. Gas Meter Installations.....	578.86
19. Gas Meters.....	7,491.83
20. Gas Regulators.....	.....
23. Gas Tools.....	.....
24. Gas Laboratory Equipment.....	.....
25. Other Tangible Gas Property.....	3,077.19
26. General Equipment.....	6,140.09
27. Engineering & Superintendence.....	1,691.53
28. Law Expenditures During Construction..	338.31
29. Injuries During Construction.....	595.42
30. Interest During Construction.....	1,883.92
31. Miscellaneous Construction Expenditures	1,014.92
Total .....	<hr/> \$48,981.95

216

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System, Coweta Plant.

GU—	1. Organization .....	\$125.00
	3. Land .....	200.00
	4. Buildings .....	532.77
	16. Mains .....	14,172.13
	17. Gas Services.....	4,353.89
	18. Gas Meter Installations.....	332.69
	19. Gas Meters.....	3,460.34
	20. Gas Regulators.....	.....
	23. Gas Tools.....	347.80
	24. Gas Laboratory Equipment.....	.....
	25. Other Tangible Gas Property.....	.....
	26. General Equipment.....	.....
	27. Engineering & Superintendence.....	1,142.59
	28. Law Expenditures During Construction..	228.52
	29. Injuries During Construction.....	402.19
	30. Interest During Construction.....	1,039.34
	31. Miscellaneous Construction Expenditures	685.55
	Total .....	<hr/> \$27,022.81

## 217 Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System, Davenport Plant.

GU— 1. Organization .....	\$398.41
3. Land .....	75.00
4. Buildings .....	28.43
16. Mains .....	4,750.94
17. Gas Services.....	1,040.79
18. Gas Meter Installations.....	123.60
19. Gas Meters.....	1,339.84
20. Gas Regulators.....	.....
23. Gas Tools.....	.....
24. Gas Laboratory Equipment.....	.....
25. Other Tangible Gas Property.....	.....
26. General Equipment.....	.....
27. Engineering & Superintendence.....	364.18
28. Law Expenditures During Construction..	72.84
29. Injuries During Construction.....	128.19
30. Interest During Construction.....	341.63
31. Miscellaneous Construction Expenditures	218.51
Total .....	<hr/> \$8,852.36

218

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Original Cost.

Distribution System, Dawson Plant.

GU—	1. Organization .....	\$45.47
	3. Land .....	60.00
	4. Buildings .....	86.24
	16. Mains .....	7,794.26
	17. Gas Services .....	432.85
	18. Gas Meter Installations .....	.....
	19. Gas Meters .....	.....
	20. Gas Regulators .....	.....
	23. Gas Tools .....	.....
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence .....	415.67
	28. Law Expenditures During Construction ..	83.13
	29. Injuries During Construction .....	146.32
	30. Interest During Construction .....	372.53
	31. Miscellaneous Construction Expenditures	249.40
	Total .....	<hr/> \$9,685.87

219

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Original Cost.

Distribution System, Deer Creek Plant.

GU— 1. Organization .....	\$18.33
3. Land .....	.....
4. Buildings .....	146.47
16. Mains .....	1,888.45
17. Gas Services.....	643.97
18. Gas Meter Installations.....	59.74
19. Gas Meters.....	613.14
20. Gas Regulators.....	.....
23. Gas Tools.....	4.38
24. Gas Laboratory Equipment.....	.....
25. Other Tangible Gas Property.....	.....
26. General Equipment.....	.....
27. Engineering & Superintendence.....	167.59
28. Law Expenditures During Construction..	33.52
29. Injuries During Construction.....	58.99
30. Interest During Construction.....	149.41
31. Miscellaneous Construction Expenditures	100.55
Total .....	<hr/> \$3,884.54

220

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Original Cost.

Distribution System: Depew Plant.

GU—	1. Organization .....	\$40.02
	3. Land .....	60.00
	4. Buildings .....	80.40
	16. Mains .....	4,672.65
	17. Gas Services.....	1,030.62
	18. Gas Meter Installations.....	131.84
	19. Gas Meters.....	1,400.75
	20. Gas Regulators.....	.....
	23. Gas Tools.....	9.27
	24. Gas Laboratory Equipment.....	.....
	25. Other Tangible Gas Property.....	.....
	26. General Equipment.....	.....
	27. Engineering & Superintendence.....	365.81
	28. Law Expenditures During Construction..	73.16
	29. Injuries During Construction.....	128.77
	30. Interest During Construction.....	328.51
	31. Miscellaneous Construction Expenditures	219.49
	Total .....	<hr/> \$8,541.20

221

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System: Edmond Plant.

GU— 1. Organization .....	\$193.98
3. Land .....	100.00
4. Buildings .....	197.70
16. Mains .....	22,053.19
17. Gas Services .....	6,159.36
18. Gas Meter Installations .....	615.94
19. Gas Meters .....	6,437.13
20. Gas Regulators .....	.....
23. Gas Tools .....	497.44
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	770.93
27. Engineering & Superintendence .....	1,773.17
28. Law Expenditures During Construction..	354.63
29. Injuries During Construction.....	624.15
30. Interest During Construction.....	1,633.66
31. Miscellaneous Construction Expenditures	1,063.90
Total .....	<hr/> \$42,475.18

222

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System: Haskell Plant.

GU—	1. Organization .....	\$163.45
	3. Land .....	800.00
	4. Buildings .....	1,886.65
	16. Mains .....	15,432.92
	17. Gas Services .....	4,518.76
	18. Gas Meter Installations .....	661.26
	19. Gas Meters .....	7,380.99
	20. Gas Regulators .....	.....
	23. Gas Tools .....	272.62
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	1,209.22
	27. Engineering & Superintendence .....	1,494.03
	28. Law Expenditures During Construction ..	298.81
	29. Injuries During Construction .....	525.90
	30. Interest During Construction .....	1,421.64
	31. Miscellaneous Construction Expenditures ..	896.42
	Total .....	<hr/> \$36,962.67

223

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System: Hunter Plant.

GU— 1. Organization .....	\$43.61
3. Land .....	25.00
4. Buildings .....	194.13
16. Mains .....	5,164.48
17. Gas Services .....	1,133.74
18. Gas Meter Installations .....	119.48
19. Gas Meters .....	1,360.03
20. Gas Regulators .....	.....
23. Gas Tools .....	60.67
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	.....
27. Engineering & Superintendence .....	396.59
28. Law Expenditures During Construction ..	79.72
29. Injuries During Construction .....	140.30
30. Interest During Construction .....	358.36
31. Miscellaneous Construction Expenditures	239.16
Total .....	<hr/> \$9,317.27

224

Oklahoma Natural Gas Company,  
Tulsa, Oklahoma.

*General Summary.*

Original Cost.

Distribution System: Kellyville Plant.

GU—	1. Organization .....	\$30.15
	3. Land .....	65.00
	4. Buildings .....	101.43
	16. Mains .....	3,315.17
	17. Gas Services .....	699.94
	18. Gas Meter Installations .....	107.12
	19. Gas Meters .....	1,289.10
	20. Gas Regulators .....	.....
	23. Gas Tools .....	.....
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	131.33
	27. Engineering & Superintendence .....	275.64
	28. Law Expenditures During Construction ..	55.13
	29. Injuries During Construction .....	97.02
	30. Interest During Construction .....	253.30
	31. Miscellaneous Construction Expenditures ..	165.38
	<b>Total .....</b>	<b>\$6,585.71</b>

225

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System: Lamont Plant.

GU— 1. Organization .....	\$64.92
3. Land .....	50.00
4. Buildings .....	179.10
16. Mains .....	7,990.53
17. Gas Services .....	1,706.44
18. Gas Meter Installations .....	178.19
19. Gas Meters .....	1,815.01
20. Gas Regulators .....	.....
23. Gas Tools .....	44.87
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	.....
27. Engineering & Superintendence .....	593.46
28. Law Expenditures During Construction..	118.69
29. Injuries During Construction .....	208.90
30. Interest During Construction .....	532.25
31. Miscellaneous Construction Expenditures	356.08
<b>Total .....</b>	<b>\$13,838.44</b>

226

Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Original Cost.

Distribution System: Luther Plant.

GU—	1. Organization .....	\$25.56
	3. Land .....	250.00
	4. Buildings .....	67.53
	16. Mains .....	3,007.46
	17. Gas Services .....	799.20
	18. Gas Meter Installations .....	121.54
	19. Gas Meters .....	677.23
	20. Gas Regulators .....	.....
	23. Gas Tools .....	.....
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence .....	233.65
	28. Law Expenditures During Construction ..	46.73
	29. Injuries During Construction .....	82.24
	30. Interest During Construction .....	218.05
	31. Miscellaneous Construction Expenditures	140.19
	Total .....	<hr/> \$5,669.38

227

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System: Midlothian Plant.

GU— 1. Organization .....	\$10.98
3. Land .....	.....
4. Buildings .....	52.74
16. Mains .....	1,341.80
17. Gas Services .....	135.88
18. Gas Meter Installations .....	19.57
19. Gas Meters .....	457.02
20. Gas Regulators .....	.....
23. Gas Tools .....	.....
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	.....
27. Engineering & Superintendence .....	100.35
28. Law Expenditures During Construction ..	20.07
29. Injuries During Construction .....	35.32
30. Interest During Construction .....	89.36
31. Miscellaneous Construction Expenditures ..	60.21
Total .....	<hr/> \$2,323.30

228

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System: Meeker Plant.

GU—	1. Organization .....	\$36.35
	3. Land .....	125.00
	4. Buildings .....	83.28
	16. Mains .....	4,003.64
	17. Gas Services .....	1,116.65
	18. Gas Meter Installations .....	138.02
	19. Gas Meters .....	1,203.17
	20. Gas Regulators .....	.....
	23. Gas Tools .....	42.33
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence .....	332.24
	28. Law Expenditures During Construction ..	66.45
	29. Injuries During Construction .....	116.95
	30. Interest During Construction .....	402.54
	31. Miscellaneous Construction Expenditures	199.34
	Total .....	<hr/> \$7,865.96

229

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System: Nardin Plant.

GU— 1. Organization .....	\$21.17
3. Land .....	87.34
4. Buildings .....	2,292.25
16. Mains .....	752.08
17. Gas Services .....	74.16
18. Gas Meter Installations .....	663.63
19. Gas Meters .....	.....
20. Gas Regulators .....	.....
23. Gas Tools .....	.....
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	.....
27. Engineering & Superintendence .....	193.47
28. Law Expenditures During Construction..	38.69
29. Injuries During Construction .....	68.10
30. Interest During Construction .....	172.28
31. Miscellaneous Construction Expenditures	116.08
Total .....	<hr/> \$4,479.25

230

Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Original Cost.

Distribution System: Peckham Plant.

GU—	1. Organization .....	\$17.58
	3. Land .....	73.50
	4. Buildings .....	1,981.25
	16. Mains .....	502.09
	17. Gas Services .....	55.62
	18. Gas Meter Installation .....	601.36
	19. Gas Meters .....	.....
	20. Gas Regulators .....	.....
	23. Gas Tools .....	.....
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence .....	160.69
	28. Law Expenditures During Construction ..	32.14
	29. Injuries During Construction .....	56.56
	30. Interest During Construction .....	143.09
	31. Miscellaneous Construction Expenditures .....	96.41
	Total .....	<hr/> \$3,720.29

231

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## D Distribution System, Pond Creek Plant.

GU—	1.	Orga	1.	Organization .....	\$83.61
	3.	Land	3.	Land .....	80.00
	4.	Build	4.	Buildings .....	212.43
	16.	Main	16.	Mains .....	10,745.02
	17.	Gas	17.	Gas Services .....	1,989.23
	18.	Gas	18.	Gas Meter Installations.....	220.42
	19.	Gas	19.	Gas Meters .....	2,118.70
	20.	Gas	20.	Gas Regulators .....	.....
	23.	Gas	23.	Gas Tools .....	543.11
	24.	Gas	24.	Gas Laboratory Equipment.....	.....
	25.	Other	25.	Other Tangible Gas Property.....	.....
	26.	Gene	26.	General Equipment .....	497.53
	27.	Engin	27.	Engineering & Superintendence.....	764.29
	28.	Law	28.	Law Expenditures During Construction.	152.86
	29.	Injur	29.	Injuries During Construction.....	269.03
	30.	Inter	30.	Interest During Construction.....	725.39
	31.	Misce	31.	Miscellaneous Construction Expenditures	458.57
Total.....					18,860.19

232

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Original Cost.

## Distribution System, Porter Plant.

GU— 1. Organization .....	\$55.11
3. Land .....	.....
4. Buildings .....	152.96
16. Mains .....	7,231.98
17. Gas Services .....	1,112.66
18. Gas Meter Installations.....	136.99
19. Gas Meters .....	1,440.44
20. Gas Regulators .....	.....
23. Gas Tools .....	42.75
24. Gas Laboratory Equipment.....	.....
25. Other Tangible Gas Property.....	.....
26. General Equipment .....	.....
27. Engineering & Superintendence.....	503.75
28. Law Expenditures During Construction.	100.75
29. Injuries During Construction.....	177.32
30. Interest During Construction.....	450.28
31. Miscellaneous Construction Expenditures	302.25
Total.....	<hr/> \$11,707.24

## 233 Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System, Red Fork Plant.

GU— 1. Organization .....	\$107.10
3. Land .....	50.00
4. Buildings .....	394.08
16. Mains .....	17,532.05
17. Gas Services .....	1,653.33
18. Gas Meter Installations.....	.....
19. Gas Meters .....	.....
20. Gas Regulators .....	.....
23. Gas Tools .....	.....
24. Gas Laboratory Equipment.....	.....
25. Other Tangible Gas Property.....	.....
26. General Equipment .....	.....
27. Engineering & Superintendence.....	978.97
28. Law Expenditures During Construction.	195.79
29. Injuries During Construction.....	344.60
30. Interest During Construction.....	873.73
31. Miscellaneous Construction Expenditures	587.38
Total.....	<hr/> \$22,717.03

234

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System, Sapulpa Plant.

GU—	1. Organization .....	\$1,047.67
	3. Land .....	2,235.00
	4. Buildings .....	7,053.93
	16. Mains .....	132,775.65
	17. Gas Services .....	19,855.67
	18. Gas Meter Installations .....	2,751.13
	19. Gas Meters .....	29,094.44
	20. Gas Regulators .....	.....
	23. Gas Tools .....	629.12
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	1,713.41
	27. Engineering & Superintendence .....	9,576.54
	28. Law Expenditures During Construction .....	1,915.31
	29. Injuries During Construction .....	3,370.94
	30. Interest During Construction .....	8,710.59
	31. Miscellaneous Construction Expenditures .....	5,745.92
	<b>Total .....</b>	<b>\$226,475.32</b>

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System, Shamrock Plant.

GU— 1. Organization .....	\$85.82
3. Land .....	400.00
4. Buildings .....	119.32
16. Mains .....	7,797.30
17. Gas Services .....	2,873.55
18. Gas Meter Installations.....	486.16
19. Gas Meters .....	4,412.67
20. Gas Regulators .....	.....
23. Gas Tools .....	83.47
24. Gas Laboratory Equipment.....	.....
25. Other Tangible Gas Property.....	.....
26. General Equipment .....	203.94
27. Engineering & Superintendence.....	784.45
28. Law Expenditures During Construction.	156.89
29. Injuries During Construction.....	276.13
30. Interest During Construction.....	726.01
31. Miscellaneous Construction Expenditures	470.67
Total.....	<hr/> \$18,876.38

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## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

## Original Cost.

## Distribution System, Stroud Plant.

GU—	1. Organization .....	\$130.12
	3. Land .....	550.00
	4. Buildings .....	269.19
	16. Mains .....	15,657.95
	17. Gas Services .....	3,551.40
	18. Gas Meter Installations.....	363.59
	19. Gas Meters .....	3,946.55
	20. Gas Regulators .....	.....
	23. Gas Tools .....	335.30
	24. Gas Laboratory Equipment.....	.....
	25. Other Tangible Gas Property.....	.....
	26. General Equipment .....	653.02
	27. Engineering & Superintendence.....	1,189.43
	28. Law Expenditures During Construction.	237.89
	29. Injuries During Construction.....	418.68
	30. Interest During Construction.....	1,120.67
	31. Miscellaneous Construction Expenditures	713.66
	<b>Total.....</b>	<b>\$29,137.45</b>

37 & 238 Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Gas Pipe Lines.

Original Cost.

PL— 1. Organization .....	\$53,010.52
2. Engineering & Superintendence.....	484,556.83
3. Law Expenditures During Construction .....	96,911.37
4. Injuries During Construction.....	170,557.40
5. Interest During Construction.....	1,057,853.00
6. Miscellaneous Construction Expenditures .....	290,734.10
8. Real Estate & Right of Way.....	1,743,333.93
9. Buildings & Structures.....	86,723.20
10. Trunk Lines .....	8,754,747.65
11. Trunk Line Pumping Station Machinery .....	400,216.94
12. Telephone & Telegraph Lines.....	6,459.43
13. Pipe Line Machinery & Tools.....	8,696.76
14. General Equipment.....	1,121.09
15. Other Pipe Line Facilities and Expenditures .....	1,126,093.26
Total.....	<u>\$14,281,015.48</u>

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## EXHIBIT B.

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Oklahoma Natural Gas Company,  
Tulsa, Oklahoma.

*Index.*

Page 1	Tulsa.
2	Turley.
3	Wellston.
4	Arcadia.
5	Chandler.
6	Coweta.
7	Davenport.
8	Dawson.
9	Deer Creek.
10	Depew.
11	Edmond.
12	Haskell.
13	Hunter.
14	Kellyville.
15	Lamont.
16	Luther.
17	Midlothian.
18	Meeker.
19	Nardin.
20	Peckham.
21	Pond Creek.
22	Porter.
23	Red Fork.
24	Sapulpa.
25	Shamrock.
26	Stroud.
27	Gas Pipe Lines.

Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Tulsa Plant.

1. Organization .....	\$7,998.78
3. Land .....	23,050.00
4. Buildings .....	73,062.66
16. Mains .....	998,576.03
17. Gas Services .....	141,032.69
18. Gas Meter Installations .....	30,912.36
19. Gas Meters .....	205,581.82
20. Gas Regulators .....	13,134.15
23. Gas Tools .....	2,236.94
24. Gas Laboratory Equipment .....	1,158.75
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	164,029.93
27. Engineering & Superintendence .....	73,114.99
28. Law Expenditures during Construction..	14,622.99
29. Injuries During Construction .....	25,736.47
30. Interest During Construction .....	72,724.70
31. Miscellaneous Construction Expenditures	43,868.99
Total .....	<hr/> \$1,890,842.25

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Oklahoma Natural Gas Company,  
Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Turley Plant.

GU—	1. Organization .....	\$15.21
	3. Land .....	.....
	4. Buildings .....	100.50
	16. Mains .....	2,261.72
	17. Gas Services .....	288.58
	18. Gas Meter Installations .....	.....
	19. Gas Meters .....	.....
	20. Gas Regulators .....	130.07
	23. Gas Tools .....	.....
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence .....	139.04
	28. Law Expenditures During Construction..	27.81
	29. Injuries During Construction .....	48.73
	30. Interest During Construction .....	123.80
	31. Miscellaneous Construction Expenditures	83.43
	Total .....	<hr/> \$3,218.89

243

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Wellston Plant.

GU— 1. Organization .....	\$93.62
3. Land .....	50.00
4. Buildings .....	194.24
16. Mains .....	11,479.01
17. Gas Services .....	2,558.53
18. Gas Meter Installations .....	337.84
19. Gas Meters .....	1,967.30
20. Gas Regulators .....	578.66
23. Gas Tools .....	.....
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	.....
27. Engineering & Superintendence .....	855.78
28. Law Expenditures During Construction ..	171.16
29. Injuries During Construction .....	301.23
30. Interest During Construction .....	764.03
31. Miscellaneous Construction Expenditures ..	513.47
Total .....	<hr/> \$19,864.87

244

Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Arcadia Plant.

GU—	1. Organization .....	\$40.81
	3. Land .....	30.00
	4. Buildings .....	146.30
	16. Mains .....	4,944.25
	17. Gas Services .....	855.76
	18. Gas Meter Installations .....	160.68
	19. Gas Meters .....	1,353.42
	20. Gas Regulators .....	.....
	23. Gas Tools .....	.....
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence .....	373.02
	28. Law Expenditures During Construction ..	74.60
	29. Injuries During Construction .....	131.30
	30. Interest During Construction .....	333.36
	31. Miscellaneous Construction Expenditures .....	223.81
	Total .....	<hr/> \$8,667.31

245

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Chandler Plant.

GU— 1. Organization .....	\$324.50
3. Land .....	225.00
4. Buildings .....	369.43
16. Mains .....	38,647.12
17. Gas Services .....	9,095.62
18. Gas Meter Installations .....	1,157.72
19. Gas Meters .....	10,052.80
20. Gas Regulators .....	.....
23. Gas Tools .....	.....
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	3,574.62
26. General Equipment .....	6,540.55
27. Engineering & Superintendence .....	2,966.13
28. Law Expenditures During Construction ..	593.23
29. Injuries During Construction .....	1,044.08
30. Interest During Construction .....	3,054.82
31. Miscellaneous Construction Expenditures ..	1,779.68
Total .....	<hr/> \$79,425.30

246

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919:

Distribution System, Coweta Plant.

GU—	1. Organization .....	\$223.93
	3. Land .....	200.00
	4. Buildings .....	1,094.44
	16. Mains .....	27,546.64
	17. Gas Services .....	6,807.37
	18. Gas Meter Installations .....	665.38
	19. Gas Meters .....	4,823.49
	20. Gas Regulators .....	.....
	23. Gas Tools .....	358.14
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence .....	2,046.87
	28. Law Expenditures During Construction ..	409.37
	29. Injuries During Construction .....	720.50
	30. Interest During Construction .....	1,844.97
	31. Miscellaneous Construction Expenditures ..	1,228.12
	<b>Total .....</b>	<b>\$47,969.22</b>

OKLA.

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## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Davenport Plant.

	I	1. Organization .....	\$69.07
		3. Land .....	75.00
GU—	1. Organ	4. Buildings .....	42.23
	3. Land	16. Mains .....	8,917.64
	4. Build	17. Gas Services .....	1,665.40
	16. Mains	18. Gas Meter Installations .....	247.20
	17. Gas S	19. Gas Meters .....	1,754.09
	18. Gas M	20. Gas Regulators .....	.....
	19. Gas M	23. Gas Tools .....	.....
	20. Gas F	24. Gas Laboratory Equipment .....	.....
	23. Gas T	25. Other Tangible Gas Property .....	.....
	24. Gas I	26. General Equipment .....	.....
	25. Other	27. Engineering & Superintendence .....	631.33
	26. Gener	28. Law Expenditures During Construction ..	126.27
	27. Engir	29. Injuries During Construction .....	222.23
	28. Law F	30. Interest During Construction .....	565.17
	29. Injuri	31. Miscellaneous Construction Expenditures	378.80
	30. Intere		
	31. Miscel	Total .....	\$14,694.43

248                      Oklahoma Natural Gas Company,  
                                 Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Dawson Plant.

GU—	1. Organization .....	\$93.11
	3. Land .....	60.00
	4. Buildings .....	166.49
	16. Mains .....	15,751.03
	17. Gas Services .....	1,104.62
	18. Gas Meter Installations .....	.....
	19. Gas Meters .....	.....
	20. Gas Regulators .....	.....
	23. Gas Tools .....	.....
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence .....	851.11
	28. Law Expenditures During Construction .....	170.22
	29. Injuries During Construction .....	299.59
	30. Interest During Construction .....	760.27
	31. Miscellaneous Construction Expenditures .....	510.66
	Total .....	<hr/> \$19,767.10

249

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Deer Creek Plant.

GU— 1. Organization .....	\$38.32
3. Land .....	.....
4. Buildings .....	247.21
16. Mains .....	3,533.53
17. Gas Services.....	1,107.68
18. Gas Meter Installations.....	119.48
19. Gas Meters.....	1,998.20
20. Gas Regulators.....	.....
23. Gas Tools.....	4.38
24. Gas Laboratory Equipment.....	.....
25. Other Tangible Gas Property.....	.....
26. General Equipment.....	.....
27. Engineering & Superintendence.....	350.30
28. Law Expenditures During Construction.	70.06
29. Injuries During Construction.....	123.31
30. Interest During Construction.....	312.11
31. Miscellaneous Construction Expenditures	210.18
Total .....	<hr/> \$8,114.76

250

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Depew Plant.

GU—	1. Organization .....	\$63.77
	3. Land .....	60.00
	4. Buildings .....	136.19
	16. Mains .....	8,763.18
	17. Gas Services .....	1,681.23
	18. Gas Meter Installations .....	263.68
	19. Gas Meters .....	813.70
	20. Gas Regulators .....	.....
	23. Gas Tools .....	9.27
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence .....	582.90
	28. Law Expenditures During Construction .....	116.58
	29. Injuries During Construction .....	205.18
	30. Interest During Construction .....	521.82
	31. Miscellaneous Construction Expenditures .....	349.74
	Total .....	<hr/> \$13,567.24

251

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Edmond Plant.

GU— 1. Organization .....	\$326.67
3. Land .....	100.00
4. Buildings .....	374.82
16. Mains .....	39,739.71
17. Gas Services .....	9,802.56
18. Gas Meter Installations .....	1,231.88
19. Gas Meters .....	8,571.66
20. Gas Regulators .....	
23. Gas Tools .....	783.78
24. Gas Laboratory Equipment .....	
25. Other Tangible Gas Property .....	
26. General Equipment .....	972.32
27. Engineering & Superintendence .....	2,986.03
28. Law Expenditures during Construction .....	597.21
29. Injuries During Construction .....	1,051.08
30. Interest During Construction .....	2,733.17
31. Miscellaneous Construction Expenditures .....	1,791.62
Total .....	<hr/> \$71,062.51

252

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Haskell Plant.

GU—	1. Organization .....	\$341.12
	3. Land .....	800.00
	4. Buildings .....	3,714.42
	16. Mains .....	39,881.84
	17. Gas Services.....	7,646.38
	18. Gas Meter Installations.....	1,322.52
	19. Gas Meters.....	9,797.36
	20. Gas Regulators.....	.....
	23. Gas Tools.....	577.06
	24. Gas Laboratory Equipment.....	.....
	25. Other Tangible Gas Property.....	.....
	26. General Equipment.....	1,513.07
	27. Engineering & Superintendence.....	3,118.13
	28. Law Expenditures During Construction.	623.63
	29. Injuries During Construction.....	1,097.58
	30. Interest During Construction.....	2,892.16
	31. Miscellaneous Construction Expenditures	1,870.88
	Total .....	<hr/> \$75,196.15

253

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Hunter Plant.

GU—	1. Organization .....	\$77.94
	3. Land .....	25.00
	4. Buildings .....	349.95
	16. Mains .....	9,886.41
	17. Gas Services.....	1,924.94
	18. Gas Meter Installations.....	238.96
	19. Gas Meters.....	1,848.34
	20. Gas Regulators.....	.....
	23. Gas Tools.....	61.95
	24. Gas Laboratory Equipment.....	.....
	25. Other Tangible Gas Property.....	.....
	26. General Equipment.....	.....
	27. Engineering & Superintendence.....	712.43
	28. Law Expenditures During Construction.	142.49
	29. Injuries During Construction.....	250.78
	30. Interest During Construction.....	637.87
	31. Miscellaneous Construction Expenditures	427.46
	Total .....	<hr/> \$16,584.52

254

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Kellyville Plant.

GU— 1. Organization .....	\$51.32
3. Land .....	65.00
4. Buildings .....	210.81
16. Mains .....	6,142.73
17. Gas Services.....	1,087.53
18. Gas Meter Installations.....	214.24
19. Gas Meters.....	1,727.31
20. Gas Regulators.....	.....
23. Gas Tools.....	.....
24. Gas Laboratory Equipment.....	.....
25. Other Tangible Gas Property.....	.....
26. General Equipment.....	169.95
27. Engineering & Superintendence.....	469.13
28. Law Expenditures During Construction.	93.83
29. Injuries During Construction.....	165.13
30. Interest During Construction.....	427.14
31. Miscellaneous Construction Expenditures	281.48
<b>Total .....</b>	<b>\$11,105.60</b>

255

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Lamont Plant.

GU— 1. Organization .....	\$123.09
3. Land .....	50.00
4. Buildings .....	244.30
16. Mains .....	15,834.58
17. Gas Services.....	3,530.20
18. Gas Meter Installations.....	356.38
19. Gas Meters.....	2,536.89
20. Gas Regulators.....	.....
23. Gas Tools.....	47.77
24. Gas Laboratory Equipment.....	.....
25. Other Tangible Gas Property.....	.....
26. General Equipment.....	.....
27. Engineering & Superintendence.....	1,125.12
28. Law Expenditures During Construction.....	225.02
29. Injuries During Construction.....	396.04
30. Interest During Construction.....	1,005.78
31. Miscellaneous Construction Expenditures .....	675.07
<b>Total .....</b>	<b>\$26,150.24</b>

256

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Luther Plant.

GU—	1. Organization .....	\$45.10
	3. Land .....	250.00
	4. Building .....	131.27
	16. Mains .....	5,201.72
	17. Gas Services .....	1,321.27
	18. Gas Meter Installations .....	243.08
	19. Gas Meters .....	1,348.27
	20. Gas Regulators .....	.....
	23. Gas Tools .....	.....
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence.....	412.28
	28. Law Expenditures During Construction.	82.46
	29. Injuries During Construction.....	145.12
	30. Interest During Construction .....	377.12
	31. Miscellaneous Construction Expenditures.	247.37
	Total .....	<hr/> \$9,805.06

257

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Midlothian Plant.

GU— 1. Organization .....	\$17.45
3. Land .....	.....
4. Buildings .....	109.93
16. Mains .....	2,256.13
17. Gas Services .....	216.19
18. Gas Meter Installations .....	39.14
19. Gas Meters .....	568.56
20. Gas Regulators .....	.....
23. Gas Tools .....	.....
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	.....
27. Engineering & Superintendence.....	159.50
28. Law Expenditures During Construction.	31.90
29. Injuries During Construction.....	56.14
30. Interest During Construction.....	142.03
31. Miscellaneous Construction Expenditures.	95.70
Total .....	<hr/> \$3,692.67

258

## Oklahoma Natural Gas Company.

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System, Meeker Plant.

GU—	1. Organization .....	\$63.34
	3. Land .....	125.00
	4. Buildings .....	162.48
	16. Mains .....	7,520.82
	17. Gas Services .....	1,816.24
	18. Gas Meter Installations .....	276.04
	19. Gas Meters .....	1,804.56
	20. Gas Regulators .....	.....
	23. Gas Tools .....	43.10
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence.....	579.01
	28. Law Expenditures During Construction.	115.80
	29. Injuries During Construction .....	203.81
	30. Interest During Construction.....	522.30
	31. Miscellaneous Construction Expenditures.	347.40
	Total .....	<hr/> \$13,579.90

259

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System: Nardin Plant.

GU— 1. Organization .....	\$32.92
3. Land .....	.....
4. Buildings .....	140.33
16. Mains .....	3,632.48
17. Gas Services .....	1,179.09
18. Gas Meter Installations .....	148.32
19. Gas Meters .....	918.76
20. Gas Regulators .....	.....
23. Gas Tools .....	.....
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	.....
27. Engineering & Superintendence.....	300.95
28. Law Expenditures During Construction.	60.19
29. Injuries During Construction .....	105.93
30. Interest During Construction.....	267.98
31. Miscellaneous Construction Expenditures.	180.57
Total .....	<hr/> \$6,967.52

260

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System: Peckham Plant.

GU—	1. Organization .....	\$30.11
	3. Land .....	.....
	4. Buildings .....	136.95
	16. Mains .....	3,685.93
	17. Gas Services .....	804.39
	18. Gas Meter Installations.....	111.24
	19. Gas Meters .....	766.32
	20. Gas Regulators .....	.....
	23. Gas Tools .....	.....
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence.....	275.24
	28. Law Expenditures During Construction.	55.05
	29. Injuries During Construction .....	96.88
	30. Interest During Construction .....	245.09
	31. Miscellaneous Construction Expenditures.	165.14
	<b>Total .....</b>	<b>\$6,372.34</b>

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Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System: Pond Creek Plant.

GU— 1. Organization .....	\$149.18
3. Land .....	80.00
4. Buildings .....	423.07
16. Mains .....	21,306.55
17. Gas Services .....	2,204.51
18. Gas Meter Installations .....	452.84
19. Gas Meters .....	2,885.03
20. Gas Regulators .....	.....
23. Gas Tools .....	572.68
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	577.83
27. Engineering & Superintendence .....	1,363.60
28. Law Expenditures During Construction .....	272.72
29. Injuries During Construction .....	479.99
30. Interest During Construction .....	1,263.45
31. Miscellaneous Construction Expenditures .....	818.16
Total .....	<hr/> \$32,849.61

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Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System: Porter Plant.

GU—	1. Organization .....	\$88.99
	3. Land .....	.....
	4. Buildings .....	283.10
	16. Mains .....	11,976.99
	17. Gas Services .....	1,778.04
	18. Gas Meter Installations .....	273.98
	19. Gas Meters .....	1,957.00
	20. Gas Regulators .....	.....
	23. Gas Tools .....	48.20
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	.....
	27. Engineering & Superintendence.....	813.46
	28. Law Expenditures During Construction.	162.69
	29. Injuries During Construction .....	286.34
	30. Interest During Construction .....	726.27
	31. Miscellaneous Construction Expenditures.	488.07
	Total .....	<hr/> \$18,883.13

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Oklahoma Natural Gas Company,  
Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System: Red Fork Plant.

GU— 1. Organization .....	\$238.07
3. Land .....	50.00
4. Buildings .....	624.56
16. Mains .....	39,163.52
17. Gas Services .....	3,734.20
18. Gas Meter Installations .....	.....
19. Gas Meters .....	.....
20. Gas Regulators .....	.....
23. Gas Tools .....	.....
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	.....
27. Engineering & Superintendence.....	2,176.11
28. Law Expenditures During Construction.	435.22
29. Injuries During Construction .....	765.99
30. Interest During Construction.....	1,939.73
31. Miscellaneous Construction Expenditures.	1,305.67
Total .....	<hr/> \$50,433.07

264

Oklahoma Natural Gas Company,  
Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System: Sapupla Plant.

GU—	1. Organization .....	\$1,991.30
	3. Land .....	2,235.00
	4. Buildings .....	13,172.46
	16. Mains .....	267,459.57
	17. Gas Services .....	38,558.35
	18. Gas Meter Installations .....	5,502.26
	19. Gas Meters .....	39,348.06
	20. Gas Regulators .....	.....
	23. Gas Tools .....	988.54
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	1,865.33
	27. Engineering & Superintendence .....	18,202.04
	28. Law Expenditures During Construction .....	3,640.41
	29. Injuries During Construction .....	6,407.12
	30. Interest During Construction .....	16,411.67
	31. Miscellaneous Construction Expenditures .....	10,921.22
	Total .....	<hr/> \$426,703.33

265

Oklahoma Natural Gas Company,  
Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System: Shamrock Plant.

GU— 1. Organization .....	\$148.96
3. Land .....	400.00
4. Buildings .....	222.73
16. Mains .....	15,038.47
17. Gas Services .....	4,599.96
18. Gas Meter Installations.....	972.32
19. Gas Meters .....	6,398.36
20. Gas Regulators .....	.....
23. Gas Tools .....	120.87
24. Gas Laboratory Equipment .....	.....
25. Other Tangible Gas Property .....	.....
26. General Equipment .....	218.36
27. Engineering & Superintendence.....	1,361.59
28. Law Expenditures During Construction.	272.32
29. Injuries During Construction .....	479.28
30. Interest During Construction .....	1,242.00
31. Miscellaneous Construction Expenditures.	816.96
Total .....	<hr/> \$32,292.18

266

Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Replacement Cost October 31, 1919.

Distribution System: Stroud Plant.

GU—	1. Organization .....	\$235.11
	3. Land .....	550.00
	4. Buildings .....	538.67
	16. Mains .....	30,637.63
	17. Gas Services .....	5,786.99
	18. Gas Meter Installations .....	727.18
	19. Gas Meters .....	5,291.11
	20. Gas Regulators .....	.....
	23. Gas Tools .....	386.20
	24. Gas Laboratory Equipment .....	.....
	25. Other Tangible Gas Property .....	.....
	26. General Equipment .....	688.55
	27. Engineering & Superintendence .....	2,149.08
	28. Law Expenditures During Construction .....	429.82
	29. Injuries During Construction .....	756.48
	30. Interest During Construction .....	1,978.65
	31. Miscellaneous Construction Expenditures .....	1,289.45
	Total .....	<hr/> \$51,444.92

## Oklahoma Natural Gas Company,

Tulsa, Oklahoma.

*General Summary.*

Gas Pipe Lines, October 31st, 1919.

## Replacement Cost.

GPL— 1. Organization .....	\$98,790.84
2. Engineering & Superintendence.....	903,024.12
3. Law Expenditures during Construction.....	180,604.82
4. Injuries During Construction.....	317,733.91
5. Interest During Construction.....	2,208,351.91
6. Miscellaneous Construction Expenditures.....	541,814.47
8. Real Estate and Right of Way.....	6,821,079.96
9. Buildings & Structures .....	145,515.09
10. Trunk Lines .....	16,691,370.74
11. Trunk Line Pumping Station Machinery .....	751,742.42
12. Telephone and Telegraph Lines.....	9,826.30
13. Pipe Line Machinery .....	9,733.37
14. General Equipment .....	1,571.56
15. Other Pipe Line Facilities and Expenditures .....	1,131,591.24
<b>Total .....</b>	<b>\$29,812,750.75</b>

Endorsed: Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

269 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit of Samuel S. Wyer.*

My name is Samuel S. Wyer. I reside in Columbus, Ohio, and am a consulting engineer. I was educated in the Ohio State University at Columbus, Ohio, taking the degree of Mechanical Engineering. For ten years I have given practically all my time to natural gas problems, acting as consulting engineer for both gas companies and the public. During the war I was Chief of Natural Gas Conservation of the United States Fuel Administration. I have acted as a consulting engineer on natural gas conservation for the United States Bureau of Mines and have acted in an advisory capacity for said Bureau a number of times in the last five years. From January 1, 1920, up to March, 1921, I had charge, as far as the services of consulting engineer were concerned, of the entire natural gas conservation program of the United States Bureau of Mines in all the gas using states in the United States. I have acted in an advisory capacity for the Smithsonian Institution, and I prepared one of the bulletins which said Smithsonian Institution published, which is a part of that institution's series on mineral conservation, the said bulletin being entitled, "Natural Gas, Its Production, Service and Conservation." I have prepared manuscript for what is known

270 as technical paper No. 257 on waste and the correct use of natural gas in the home, which was prepared and published under the supervision of the United States Bureau of Mines. I have also acted a number of times as consulting engineer for the United States Bureau of Standards on natural gas conservation matters, and in 1921 acted as consulting engineer for the Bureau of Mines of the Canadian government, and made an exhaustive study of the natural gas resources in the province of Ontario. I have acted as consulting engineer for the British Empire Trust Company of London, England, in its Canadian natural gas holdings.

In addition to all the foregoing I have been employed by and have acted for the Ohio Public Utilities Commission and the Public Service Commission of the Commonwealth of Pennsylvania, and also for the City of Dayton, Ohio.

In addition to that I have during the last ten years been employed by a large number of natural gas companies, and have examined and appraised about three-fourths of the natural gas industries of North America.

The average leakage in the natural gas systems in the United States, from the well to the consumers' burner tips is 35% of the gas annually put into said systems; and the average leakage and shrinkage in the natural gas distributing systems in the United States is 15% of the amount of gas annually delivered into said distributing systems.

I have made an examination of the natural gas distributing plants owned by the Oklahoma Natural Gas Company in Oklahoma, and I have also examined numerous other natural gas distributing systems in the State of Oklahoma, and the average leakage prevailing in the natural gas distributing systems in the State of Oklahoma is considerably in excess of 20% of the amount of gas annually delivered into them.

I have made a careful examination of the Oklahoma Natural Gas Company's distributing plants in Tulsa and Sapulpa. The streets and alleys in both of those cities are paved, the paving having a concrete base, and being surfaced in some instances with asphalt and 271 in others with paving brick. The tracks of the street railways both in the City of Tulsa and the City of Sapulpa are not adequately bonded, so that currents of electricity leak off of and stray away from said tracks, get onto the underground pipes of the Oklahoma Natural Gas Company, and then where such stray currents leave such pipes they produce a pitting action (called electrolysis) that soon produces holes in the pipe, thereby increasing the leakage possibilities. This is without fault on the part of the Oklahoma Natural Gas Company, and can be remedied only by the street railway companies.

In my judgment, after a careful survey of the situation in the cities of Tulsa and Sapulpa, it would cost the Oklahoma Natural Gas Company half as much to correct the leakage in said two cities as it originally cost to construct the said distributing plants.

The correction of the leakage in the pipe lines and distributing systems of natural gas companies serving the public is primarily a conservation measure, and is one of peculiar and primary interest to the public, for the reason that natural gas is the best, most convenient and cheapest fuel known to man; and it is to the interest of the public that the supply be conserved as fully as possible, and the period of service during which gas can be had and used be extended as long a time as possible. For that reason a natural gas company should not be required to stand uncompensated the cost of correcting the leakage in its plant; and especially is that true if the rates which it is permitted to charge and collect are no greater than would render the company a reasonable return upon the value of the property, and are not sufficient to set aside in addition to such return an earning for the purpose of correcting the leakage, taking care of depreciation, and amortizing the property.

Since the year 1912 I have been carefully observing and studying the natural gas situation in the State of Oklahoma, noting the discovery and history of its gas fields, their life and depletion, and the necessity of the gas companies constantly building new lines

to new fields; and from my study, experience and observation of said matters in Oklahoma, it is my opinion that if present conditions continue, and the Oklahoma Natural continues to deplete its fields as it has done in the past, then its business will come to an end within four years from this date.

During the spring of 1921 I made a careful and thorough survey of the properties of the Oklahoma Natural Gas Company. From said survey I ascertained that the Oklahoma Natural Gas Company had increased its number of miles of transportation pipe since 1911 180%; that it had increased its miles of transmission pipe per thousand domestic consumers 34%; that it had increased the total of its horsepower gas compressors 257%; that it had increased the horsepower of its compressor station capacity per million cubic feet of gas sold 67%; that it had increased its horsepower compressor station capacity per domestic consumer of 66%.

The average cost of a producing well to the Oklahoma Natural Gas Company since 1911 has increased 590%; the average purchase price of gas paid by the Oklahoma Natural Gas Company has increased 280%; its total annual taxes have been increased 1,362%; its taxes per thousand cubic feet of gas have been increased 165%; its taxes per domestic consumer have been increased 567%; the annual cost of operating its gas compressors has increased 265%; the compressor station operating cost per thousand cubic feet of gas has increased 700%. The operating cost of distributing the gas sold in the distribution systems has increased 475%; the annual distributing cost per domestic consumer has increased 244%.

Since the year 1917 the average open flow capacity of the Oklahoma Natural Gas Company's wells has decreased 45%; the average open flow capacity of gas wells from which the Oklahoma Natural purchases gas has decreased 54%; the rock pressure in the Stroud pool has decreased 41%; in the Mounds pool 73%; in the Haskett pool 71%; in the Shamrock-Cushing pool 80%; in the Broken Arrow pool 50%, and in the Tulsa and Bird Creek pool 54%; and since 1918 the rock pressure in the Bixby pool has decreased 46%, and the rock pressure in the Claremore pool has decreased 54%.

The peak of the gas production in the State of Oklahoma was reached in 1917, and that was also the peak of the gas production in the entire United States. Since the year 1917 the gas production in the State of Oklahoma has been steadily and constantly decreasing, and the cost of producing and distributing the same has been constantly increasing.

Natural gas has about twice as many heat units per thousand cubic feet as manufactured gas has. The present average price of manufactured gas throughout the United States is \$1.25 per thousand, and upon that basis natural gas is intrinsically worth to the consumer \$2.50 per thousand.

Natural gas is an exhaustible resource that when once used is gone forever. Every time a natural gas company sells a thousand cubic feet of gas it is selling a part of its property, and is disposing of a part

of its capital. The natural gas business is unique in that it is the only public utility service that does not, and in fact can not, manufacture the basic element of its service. Manufactured gas companies produce their gas from the raw material that they can buy in the open market. Transportation agencies, like railroads and street railways, can easily create the motive source of their service. Water utilities have their supply constantly replenished by nature. Intelligence transmission utilities like the telephone and telegraph, can easily create the primary source of their service, as can also electric light companies. The natural gas industry is alone in depending entirely on the caprice of nature for first the finding, and secondly for the continuity of the supply of its public utility service. Only one thing is certain about the natural gas business, and that is that there is an ultimate end to it. For that reason it is necessary that, in addition to an earning for interest or dividend on the investment and for taking care of depreciation, a natural gas company be allowed an earning for the purpose of amortizing its investment against the time when the natural gas available to it is exhausted. No other public utility is required to do that, because nature has placed no limitation upon the duration of the business of any other public utility.

274 The natural gas business is the most hazardous of all public services, for the reason that it combines a public service with a mining venture, that the natural gas company deals in a commodity which it is unable to create or manufacture, the supply of which is always uncertain, and the exhaustion of which is an ultimate certainty. Since the hazards are greater than in any other public utility, the earnings allowed ought to be correspondingly greater. In my judgment a natural gas company should be allowed a sufficient sum for depreciation, not only to take care of its system, but also to return to its investors their principal by the time the gas available to the company is exhausted. In the case of the Oklahoma Natural Gas Company, in my judgment, the percentage which it is entitled to earn, for said purpose, under the present conditions with which it is faced, is not less than 15%. In addition to that the Oklahoma Natural Gas Company should be allowed an earning for dividend or interest upon the investment, considering the hazard of the investment, of at least ten per cent per annum. The foregoing earning, in my judgment, should be for the benefit of the stockholders, and should not go into the capital account. Whatever the natural gas company is required to expend for the correction of its leakage should be deemed an operating charge, a portion of its expenses, and additional earnings should be allowed to take care of that.

Having been familiar with this property since the year 1912, I know that the Oklahoma Natural Gas Company has been required to expend enormous sums of money each year since and including the year 1917, which sums run into the millions of dollars, in building new pipe lines to new gas fields and new compressor stations. I further know that the Oklahoma Natural Gas Company has been required to do this, not for the purpose of increasing the amount or

volume of the business which it did, but on the contrary, the amount or volume of its business has been constantly decreasing since the year 1917; and these new investments have been required to be made merely for the purpose of being able to continue to serve a constantly diminishing supply of gas to that portion of the public which the

Oklahoma Natural Gas Company was already obligated to  
275 serve. I know that the investment which the Oklahoma Natural Gas Company has made in these new pipe lines and new compressor stations since and including the year 1917 have exceeded the Oklahoma Natural Gas Company's net income by more than a million dollars; and the investments in new pipe lines and compressor stations has not been counted as an expense in determining the net income.

The result of this, is that the Oklahoma Natural Gas Company is being required year after year to pyramid its investment, and if it is required to treat these new lines and compressor stations as additional investment, the result will be that when the gas is ultimately exhausted, and the business comes to an end, all that the company will have earned and more will have been put into the property, which will then become worthless except for what it will bring as junk.

In my judgment, the Oklahoma Natural Gas Company's capital account should not be further pyramided, and whatever it is required to expend in building new lines to new fields and in building new compressor stations to serve its same customers with a decreasing supply of gas, should be treated as a part of the expense of serving those customers, and thus wiped out each year.

The present replacement cost of the property of the Oklahoma Natural Gas Company is from 28% to 30% higher than the original cost thereof.

SAMUEL S. WYER.

Subscribed and sworn to before me this 16th day of December, 1921.

[Seal of Emma Selinger, Notary Public, Oklahoma County,  
Okla.]

EMMA SELINGER,  
Notary Public.

My commisison expires Jan. 12, 1925.

Endorsed: Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy Clerk.

276

No. 1.

In the District Court of the United States for the Western District  
of Oklahoma.

No. 501. Eq.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit of J. E. Dalious.*

J. E. Dalious, being first duly sworn, on his oath deposes and says:  
My name is J. E. Dalious, I am 35 years of age, and am auditor  
of the Oklahoma Natural Gas Company, and have been such audi-  
tor since December 15, 1919. As auditor of the Oklahoma Natural  
Gas Company I have the supervision over the keeping of all the  
books, vouchers and records of said company.

Since October 31, 1919, the Oklahoma Natural Gas Company has  
added to its production and transmission systems, including its main  
system and its Enid system property used and useful in serving the  
public with gas, costing \$1,232,384.14.

Since said date the Oklahoma Natural Gas Company has removed  
from the production and transmission property of the Claremore  
system property used and useful in rendering its said public service,  
in excess of additions, costing \$188,895.62.

Since said October 31, 1919, it has added to the Claremore distrib-  
uting system, in excess of removals, property costing \$18,008.59.

Since October 31, 1919, it has added to its distributing system in  
the City of Tulsa, in excess of removals therefrom, property used and  
useful in rendering its service in said city, costing said com-  
pany \$489,630.07.

Since said date it has added to its Sapulpa distributing sys-  
tem, in excess of removals therefrom, property costing \$18,550.08.

In Chandler it has added \$38,916.08.

In Coweta it has added \$1,339.26.

In Davenport it has added \$724.20.

In Dawson it has added \$523.17.

In Deer Creek it has added \$627.22.

In Depew it has removed property of the value of \$528.08, in excess  
of its additions.

In Edmond it has added \$6,031.17.

In Haskell it has added \$34,433.26.

In Hunter it has added \$123.14.

In Inola it has added \$1,434.31.

In Kellyville it has added \$1,253.78.

In Lamont it has added \$565.93.

In Luther it has removed, over and above additions, property cost-  
ing \$54.98.

In Meeker it has added \$129.62.  
In Midlothian it has added \$31.22.  
In Nardin it has added \$165.61.  
In Peckham it has added \$106.23.  
In Pond Creek it has added \$510.70.  
In Porter it has added \$189.24.  
In Red Fork it has added \$5,392.25.  
In Shamrock it has added \$728.56.  
In Stroud it has added \$1,017.36.  
In Turley it has added \$201.22.  
In Wellston it has added \$1,675.92.

All of the foregoing additions were in excess of the removals from said plants, and represent the net additional in excess of removals, and the same consisted of property used and useful in rendering the Oklahoma Natural's public service in each of said towns and cities.

278 The Oklahoma Natural Gas Company's sales of gas have been decreasing each year since I have been with it. In the year 1919 its total sales of gas were 21,997,179 M cubic feet. In the calendar year 1920 its total sales of gas in all its properties were 20,030,706 M cubic feet. For the year beginning November 1, 1920, and ending October 31, 1921, its total sales of gas from all its properties in the State of Oklahoma, including the Claremore, Inola and Ramona systems, for all purposes, as measured by the meters of its consumers, amounted only to 13,740,290 M cubic feet.

The Oklahoma Natural Gas Company has been operating under the rates fixed by said Corporation Commission in its said order No. 1886, except in the towns of Claremore, Inola and Ramona, which said order did not cover, since July 1, 1921; and the result of said operations has been that in the month of July, 1921, it suffered an actual out of pocket deficit of \$72,118.25. In the month of August, 1921, it suffered an actual out of pocket deficit of \$68,162.30. In the month of September it suffered an actual out of pocket deficit of \$84,071.81. All of the Oklahoma Natural Gas Company's expenses for the month of October have not yet been reported and tabulated, but sufficient have been received and tabulated to show that during the month of October, 1921, the Oklahoma Natural's actual out of pocket deficit will exceed that of the month of September, 1921.

The foregoing deficits consist of the excess of the Oklahoma Natural's actual out of pocket expenses over and above its gross income; and said deficits exist without making any allowance whatsoever for interest or dividend on the investment, for depreciation, for amortization of the property and for correcting leakage.

During the year beginning November 1, 1920, and ending October 31, 1921, the distributing plants served by the Oklahoma Natural Gas Company's production and transmission systems, exclusive of Claremore, Inola and Ramona, sold for domestic use 9,100,443 M cubic feet of gas, and for industrial use 1,963,004 M cubic feet, measured by the consumers' meters. The average leakage in said distributing plants was and is 20% of the gas annually delivered

279 into them, so that it was necessary for them to purchase from complainant's production and transmission system 11,375,554 M cubic feet. Applying the city gate rate of 25 cents per M prescribed by the Corporation Commission in its order No. 1886 for domestic gas, the said amount would have brought the Oklahoma Natural Gas Company's production and transmission systems the sum of \$2,843,888.50. In order that said distributing plants might sell 1,963,004 M cubic feet of gas for industrial purposes it was necessary because of the leakage that they procure from complainant's said production and transmission system 2,453,755 M cubic feet. Applying the city gate rate of 20 cents per M cubic feet prescribed by the Corporation Commission in its order for industrial gas, the same would have brought the Oklahoma Natural Gas Company's production and transmission systems the sum of \$490,751.00, thus making a total of \$3,334,639.50, which would have been received by the Oklahoma Natural's production and transmission property from said distributing plants for the gas furnished them at the city gate rates prescribed by said Commission.

In addition thereto during said year the Oklahoma Natural Gas Company's production and transmission property sold 2,633,348 M cubic feet of gas in the oil and gas fields for well drilling purposes, and received therefor \$756,791.71; and it also sold to domestic consumers on its field lines, not in any city or town, 53,428 M cubic feet, and received therefor \$22,070.69, which would make a total gross income from the sale of gas by said production and transmission systems of \$4,113,501.90.

The Oklahoma Natural Gas Company's taxes and other out of pocket expenses for its said production and transmission systems for the year ending October 31, 1921, including the cost of gas purchased, was \$3,814,422.09; and this was exclusive of depreciation, amortization, interest or dividend on the investment, and the expense of building new lines to new gas fields. The expenses subtracted from the gross income would leave a net income of \$299,079.81, with which to pay interest or dividend on the investment, take care of depreciation, and amortize the said investment against the time the supply of gas available for said properties will be exhausted.

280 Without taking up specifically each distributing system owned by the Oklahoma Natural Gas Company, and stating specifically the number of cubic feet of gas sold by each of said distributing systems, the number of cubic feet it was necessary that each buy, the distributing expenses and taxes in each system, and the gross income in each of said systems, this affiant states that he has carefully read the statements with respect to same in the complainant's bill of complaint herein; that he compiled the figures and furnished the data upon which said statements in said bill of complaint were based, and that the statements respecting the quantity of gas sold in each distributing system, the expenses of each distributing system, and the gross and the net income of each distributing system, as stated in said bill of complaint, are true and correct; and this affi-

ant hereby adopts the said statements so made in said bill of complaint with the same force and effect as though he had repeated the same in this affidavit. This applies also to the Claremore and Inola production, transmission and distribution systems.

The Oklahoma Natural Gas Company has an investment in excess of \$350,000 in gasoline absorption plants. This investment is not included in any of the gas properties of the Oklahoma Natural Gas Company; and all of the value of the Oklahoma Natural Gas Company's property used and useful in rendering its service to the public are exclusive of the investment in the absorption gasoline plants. During the calendar year 1920 the Oklahoma Natural Gas Company made a net profit of \$48,985.65 upon the operation of its absorption gasoline plants; and for the nine months ending September 30, 1921, it suffered a net deficit of \$2,609.46 in the operation of said plants.

Further affiant saith not.

J. E. DALIOUS.

Subscribed and sworn to before me this 12 day of December, 1921.

[SEAL.]

EMMA SEBERGER,

*Notary Public in and for Oklahoma County, Oklahoma.*

My commission expires Jan. 12, 1925.

281 [Endorsed:] Filed in District Court February 27, 1922.  
Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

282 In the District Court of the United States for the Western  
District of Oklahoma.

No. —.

OKLAHOMA NATURAL GAS COMPAY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Testimony of M. E. Durham Given Before the Corporation  
Commission.*

283 By Mr. Richardson:

Q. Your name is M. E. Durham?

A. Yes, sir.

Q. Mr. Durham, did you make an appraisal of the physical properties of the Oklahoma Natural Gas Company?

A. Yes, sir.

Q. At that time what position did you occupy?

A. I had charge of the valuation and engineering work for the State Corporation Commission of Oklahoma.

Q. Did you make that appraisal under the direction and supervision of the Corporation Commission?

A. Yes, sir.

Q. You have already introduced that appraisal, I believe, as Durham's Exhibit 1, have you not?

A. Yes, sir.

Q. As of what date, Mr. Durham, did you make that appraisal?

A. As of September 30, 1919.

Q. That, then, took into consideration only the property of the Oklahoma Natural Gas Company on September 30, 1919?

A. Yes, sir.

Q. Now, in regard to the physical property of the Oklahoma Natural Gas Company, on September 30, 1919, the company had completed its line from Cement to Walters at that time had it not?

A. Yes, sir.

Q. Did you include in your appraisal the line from Cement to Walters?

A. Yes, sir.

Q. I will ask you whether or not you included in that appraisal the labor items in laying that line?

A. No sir, with this explanation. We went into a great deal of detail in making this inventory but that line was new—in fact, they connected it to the wells down there just before we finished the field work. I was quite sure that they had every invoice and check for both labor and material in that line and we had so much valuation work to do that I instructed the auditor of the Oklahoma Natural to send me a complete list of material in that particular line and the complete cost of the labor in laying that line. As well as I remember it was about 35-6/10 miles and maybe more. I came back to Oklahoma City on about the 7th of December and we began the compilation of the field work and we finished that some time in January. At that time I had not received this information from the auditor of the Oklahoma Natural and I wrote him a letter or two concerning it and he told me that the general superintendent had not, as yet, made his final transfer report of material and said he would be unable to give it to me for about a month and I waited

284 until about the first of April for it and finally I wrote him if I did not get it in a certain length of time that I was going to close the inventory and leave it out and the company could class it themselves later. He sent me a list of the material in the line and the fittings but did not have the labor charges and I closed the inventory without those charges.

Q. That was Mr. Lewellyn who was auditor?

A. Yes, sir.

Q. As I understand your valuation does not include any of the labor charges in connection with the laying of the line from Cement to Walters?

A. They have that divided into three sections: Line F-1, F-2, and F-3. As well as I remember that is what the company terms its F-3 line and may be included in F-2.

Q. Do you know whether or not the freight on that pipe was included?

A. No sir, I don't.

Q. Now, Mr. Durham, in addition to that does your inventory and appraisal contain anything for overhead charges?

A. No sir.

Q. Is there anything in your inventory and appraisal with respect to organization and expenses?

A. No sir.

Q. Is there anything in your inventory and appraisal with respect to engineering and superintendence?

A. No sir.

Q. Is there anything in your inventory and appraisal with respect to law expenditures during construction.

A. No sir.

Q. Is there anything in your inventory and appraisal with respect to injuries during construction?

A. No sir.

Q. Is there anything in your inventory and appraisal with respect to interest during construction?

A. No sir.

Q. Is there anything in your inventory and appraisal with respect to miscellaneous construction expenditures?

A. No sir.

Q. As I understand you then you were merely undertaking to determine the original cost value of the actual physical property as you found it at that time?

A. Yes sir.

285 Q. By omitting those items which I have just mentioned did you mean for the Commission to infer or to testify that those were not to be considered in determining the value of the property for rate making purposes?

A. No sir. You see the Commission is completely departmentized. They have an auditing department and other departments. I had that question up with the Commission several times and it seemed to be the opinion of the Chairman that that was a matter that should be estimated or figured out by the auditing department and I was instructed not to include any of those things in my work and to pay no attention or give no consideration to it

Q. Now, there is nothing, also, in your appraisal, with respect to what are ordinarily known as intangibles.

A. No sir.

Q. There is nothing there for going concern value.

A. No sir.

Q. And nothing for working capital?

A. No sir.

Q. By omitting those items did you mean to testify or mean it to be understood that in determining the value of the property for rate making purposes those items should not be considered?

A. No sir.

Q. Now, you found the value of the Oklahoma Natural's property as it existed on September 30, 1919, undepreciated, to be what?

A. \$13,153,651.39.

Q. That was exclusive of all the overheads and intangibles which I have mentioned?

A. Yes, sir.

Q. In other words that was the bare bones of the property at that times.

A. Yes, sir.

Q. Mr. Musson in his appraisal in which he included those overheads found the value of the property to be \$16,061,960.70, the original cost value. Do you know whether or not, giving consideration to those overheads, there would be very much difference between your and Mr. Musson's appraisals and giving consideration, also, to the labor items upon the Walters' Line?

A. May I just figure here a moment?

Q. Yes.

A. (Figuring:) What was his total?

Q. \$16,061,960.70.

A. There would be very little difference. If I apply the percentage for intangibles that I have since applied,—since I left the Commission,—and which has been approved by the Commission in one particular case, to the figures I have here, and not depreciate it, I would get \$15,784,381.56. To that would be added whatever that labor is on line F-2.

286 Q. And that labor would bring it up to about what his was?

A. It would not be far apart.

Q. In regard to depreciation, by making this valuation upon the basis of the original cost, did you mean for the Commission to infer or do you mean to testify that the original cost is the proper basis upon which to value the property for rate making purposes?

A. I didn't mean to infer that any method was the method, because the Commission instructed me, in making these appraisals, to follow the original cost theory.

Q. So you were not expressing an opinion one way or the other?

A. No sir.

Q. In cases where rates are fixed upon original cost basis do you know of any where the property has ever been depreciated?

A. No sir.

Q. In other words if the original cost basis is taken as the basis for rates, then there is no depreciation figure.

A. I don't know of any cases where it has been done.

Q. What did you find to be the accrued depreciation—the weighted average depreciation upon the property?

A. That will show up different on every piece of property. We walked all the lines of the Oklahoma Natural and dug into these city lines in practically every block. Over at Sapulpa, may be, I would depreciate that city distribution system sixty per cent if I found it to be in that condition. Maybe at Tulsa I would depreciate it thirty. If they had some new property I would not depreciate it at all. It would be 100 per cent. As well as I remember it, from what the report shows, I can give it by towns. At Tulsa the weighted average depreciation on the entire property—that includes, of course, meters and everything—was 17.56 per cent. Turley the same—No. Turley 24.81 per cent. Wellston 23.60—

Q. That all speaks for itself. What I am getting at here, was the weighted average, the average depreciation you applied to the whole property? As I recall——

A. In dollars and cents.

Q. You found that the value of the whole property was \$13,153,-651.39 and you took a weighted average depreciation amounting, on the whole property, to \$2,710,000.

A. Approximately 20 per cent.

Q. Just about 20 per cent, the weighted average?

A. Yes sir.

Q. Now, assuming that that is correct—that was your best judgment as to what it was, was it?

A. Yes sir.

Q. Assuming that that is correct, if the Oklahoma Natural Gas Company had added to that property since that time a million five hundred twenty-eight thousand dollars worth of new property, would the depreciation upon the entire investment be as much as 20 per cent?

287 A. No sir.

Q. About what would it be?

A. Well, I don't know. It would be whatever amount the——

Q. I just want you to approximate it.

A. A million how much?

Q. \$1,528,000.

A. It would be about 18 per cent.

Q. Upon the whole, that property being counted as new and not depreciated at all.

Commissioner Russell:

Q. And this other property remaining at the same time?

A. Yes sir.

Q. This property hasn't been sterilized so that the depreciation would not continue, has it?

A. Well, I was speaking at that time—as of that date.

Q. It has been a year and a half.

A. No, it was finished last December—well, it has been nearly a year. Of course this property has depreciated some since then, that is true, but the way I understood his question was that if it had that new property at that time, would it lower the depreciation at the time of the inventory. It certainly would. It would lower it some but how much I don't know. Applying it as of that day it would lower it.

Q. That would be only a matter of calculation of course.

Mr. Richardson:

Q. Mr. Durham, are you familiar with the property of the Oklahoma Natural Gas Company?

A. I was when I finished that inventory. I knew it pretty well.

Q. What, in your opinion, should be the working capital of the Oklahoma Natural Gas Company, if you know, in dollars and cents?

A. I know in—

Q. Or in formula.

A. I know in dollars and cents what it should be but I think the working capital should be equal to one and one-half months operating expenses.

Q. That would be determined by finding out the expenses?

A. Yes sir.

Q. Now your inventory and appraisal is what is sometimes called the bare bones of the property—just the physical units?

288 A. Absolutely nothing but the physical property.

Q. What, in your opinion, would be the going concern value of that property; that is to say, what is that property put in order, in working condition and in business and actually transacting business, worth, over and above the aggregate of its units?

A. If I would place an amount I would allow fifteen per cent.

Q. For going concern?

A. Yes sir.

Q. The property with all the units assembled, coordinated, put together in working order with an established business would be worth fifteen per cent more than the sum of the units in going concern?

A. Yes sir.

By Mr. Richardson:

Q. I want to ask you a further question. You testified your appraisal was made on the original cost basis.

A. Yes sir.

Q. Are you familiar with the present prices of labor and material?

A. Yes sir.

Q. Do you know how they compare with the original cost?

A. Yes sir, they will run seventy per cent higher. That is a figure I recently used in a case here before the Commission.

Q. Present prices of labor and materials will run seventy per cent higher than the figures you used for original cost?

A. Yes sir.

Q. That is all.

289 STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

H. L. Redal, being first duly sworn, on his oath deposes and says: During the hearing of the application of the Oklahoma Natural Gas Company for an increase in rates, the same being Cause No. 4023 pending before the Corporation Commission, and which resulted in Order No. 1886, I was one of the official court reporters of said Corporation Commission, and as such I took in shorthand and transcribed the testimony given by the witness M. E. Durham. I further state that the above and foregoing is a true and correct

transcript of that portion of the said M. E. Durham's testimony given before said Commission in which the said M. E. Durham testified as to the value of the property of the Oklahoma Natural Gas Company, and that the above and foregoing is a true and correct copy of the official transcript of that portion of said M. E. Durham's testimony.

H. L. REDAK.

Subscribed and sworn to before me this 9th day of December, A. D., 1921.

[SEAL.]

EMMA SEBERGER,  
Notary Public.

My commission expires Jan. 12, 1925.

Endorsed: Filed in District Court on February 27, 1922. Arnold C. Dolde, Clerk, by W. V. Haws, Deputy.

290 In the United States District Court for the Western District of Oklahoma.

No. 501. Eq.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and S. P. Freeling, Attorney General of Oklahoma, and The City of Tulsa, a Municipal Corporation, and Frank E. Duncan, Its Attorney, and The City of Sapulpa, a Municipal Corporation, and Le Roy J. Burt, Its Attorney, and The City of Claremore, a Municipal Corporation, and F. W. Holtzendorff, Its City Attorney, Respondents.

*Testimony of R. H. Bartlett, Vice-President of the Oklahoma Natural Gas Company, Before the Corporation Commission on May 6, 1918.*

291 Before the Corporation Commission of Oklahoma.

Cause No. 3322.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Petitioner,  
vs.

OKLAHOMA GAS & ELECTRIC Co. et al., Respondents.

Application for Readjustment of Rates of Natural Gas.

Appearances as of proceedings heard before Commission May 6, 1918.

## Cross-examination of Mr. R. H. Bartlett.

By Mr. Bennett:

(Witness having been duly sworn, testified as follows:)

Exhibit #20 offered as part evidence by Mr. Richardson, same being letter from Howe, Snow, Corrigan & Bartles of Grand Rapids, Michigan, showing schedule of rates in effect at Little Rock, Arkansas.

Mr. Howard offered objection to same on the ground of same being incompetent, irrelevant and immaterial and same having not been properly identified with this case, and for the further reason that it does not offer any evidence tending to prove conditions of rates in Oklahoma.

Commissioner Humphrey: Objection overruled.

Interrogatories as follows:

Q. When were the negotiations of taking over the consolidated companies you mentioned in your direct examination on your first cross-examination by the Oklahoma Natural Gas Co. made?

A. It was talked of early last Spring and actual efforts were started I believe about last June.

Q. Who conducted these negotiations?

A. The directors of the various companies assisted by a special committee that was composed of neutral interests which was appointed and agreed to act.

Q. Were you one of that committee acting for your company?

A. I was one of the directors, yes sir.

Q. These negotiations were continued from June, 1917, up to the consummation and merger of the companies in the fall of 1917?

A. Yes there were several meetings over that period.

Q. Were these companies which you took over competing companies with your company?

A. No sir.

Q. What were they engaged in.

A. Supplying different districts throughout the state and towns with gas.

292 Q. Did you take over the districts they were supplying as additional territory for your company to supply?

A. We put all of those properties together.

Q. You had an appraisalment made on the properties of each of those companies before taking them over?

A. Yes.

Q. Was that appraisalment made on a basis of a fair cash value at that time?

A. I couldn't state as to that. This committee that I mentioned made the appraisements for the consolidation. Just how they arrived at their figures I don't know.

Q. Didn't you as directors and active vice president of your com-

pany make inquiry as to whether these were fair values on the properties you were purchasing?

A. We agreed when we made the merger that the values were fair and reasonable and the stockholders agreed to it when the deal was made.

Q. You then assumed that these were fair cash values for the property which you purchased of those companies.

A. As I remember now, in all our accountings and records, I don't think anything was said about cash values.

Q. When I asked you if the appraisalment was supposed to represent the fair and reasonable valuation of the property, did you say they were?

A. Yes sir, fair and reasonable values.

Q. Was it agreed at the time you had this appraisalment made that you were to pay for the property of each of these companies in stock of the Oklahoma Natural?

A. Yes.

Q. What was the then market value of the stock of the Oklahoma Natural Gas Co.?

A. Just about par. I think I told you the other day in cross examination that the value of the stock at that time was something like, say between twenty and thirty cents on the dollar.

Q. The par is \$25 a share?

A. Yes \$25 a share.

Q. How much additional stock was issued in purchase of these subsidiary companies by the Oklahoma Natural?

A. Four million 642 or 3 thousand at the present time.

Q. At that time you had issued in the Oklahoma Natural stock of the face value of four million of stock?

A. Yes.

Q. What represents the additional increase of 2 or 3 millions? I mean of stock issued about that same time, where you testified it was ten or eleven million. I ask- you the other day how much stock had been issued in the Oklahoma Natural and as I recall you answered probably ten, or above ten million.

A. You must have misunderstood. The authorized capital of the company now is eight million. Then I answered there was eight million some outstanding at that time.

Q. That represented the original and also those covering  
293 these purchases?

A. Yes.

Q. How long after it was it that you declared a dividend, after you purchased these companies?

A. We paid a dividend on October 20th.

Q. When did you purchase these companies?

A. The transfer was made effective as of October 1st.

Q. You declared a dividend at the same time practically?

A. The deal was consummated sometime prior to October 1st. I think on the 14th of August we got together and made our final arrangements at that meeting but the properties were turned over as of October 1st.

Q. You paid a dividend upon all the issued stock. Not only the 4 million but on the 4 million and 600 thousand after taking over these companies?

A. Yes.

Q. You paid a dividend of 8 per cent on the four million 600 thousand which had not been a part of the company but a few days?

A. We paid a dividend of 8 per cent.

Q. Didn't you pay a dividend of 8 per cent on all of it?

A. No sir.

Q. When was the dividend of 8 per cent declared?

A. We have not paid any single dividend of 8%. It was at the rate of 8%.

Q. When were your last dividends paid declared?

A. We paid 2% October, 1917.

Q. On the entire stock?

A. Yes after the consolidation.

Q. The next one?

A. January 20th, of 2%.

Q. You paid 4% in your dividends, one in Oct. and on- January?

A. Yes.

Q. Have you paid any since?

A. Yes April 20th this year.

Q. Of 2%?

A. Yes.

Q. Any since then?

A. No.

Q. Then you have paid dividends of 8% in all since the merger in Oct., 1917, upon the entire capital stock of 4,600,000?

A. Yes.

Q. Mr. Bartlett, were you one of the original incorporators of the Oklahoma Natural?

294 A. Not one of the original incorporators, but I was Secretary and Treasurer when the company was originally organized.

Q. Were you a stockholder?

A. Yes very soon after that, a small stockholder.

Q. Do you know what was the consideration of the issues of the first capital stock of the Oklahoma Natural?

A. Yes.

Q. What was it?

A. Properties, Gas wells, Gas, Gas leases

Q. Situated where?

A. A great part of it was situated in the Hog Shooter Gas Pool.

Q. Who were the original owners of the property turned over to the Oklahoma Natural in exchange of this?

A. There was probably 15 or 20 or more operators in that district

Q. Was the president of this company now, one of those?

A. Yes.

Q. How much was paid for that?

A. The full capital 4 million.

Q. Was the entire issue paid up at the transfer of properties of the Oklahoma Natural?

A. Yes.

Q. There never has been put into this company, so far as you know, any money in exchange of this stock originally?

A. No there was no actual money put in any stock when the company was organized.

Q. With reference to this 4 million was any of that issued in consideration of cash in the treasury of the company. The original issue of 4 million dollars now, am asking you if any of that stock, the first issue, was bought or issued in consideration of money, or was all issued in consideration of property?

A. It was all for property.

Q. Were you officer and did you take part in those negotiations?

A. No I had nothing to do with that originally.

Q. Who were those operators who made these conditions in consideration of this 4 million stock?

A. G. T. Braden, the late T. M. Barnsell of Pittsburg, Pa., Harry Heasley and associates known as Vonsan Oil Co. There were quite a number of other operators.

Q. Can you tell us what property was conveyed to this company in consideration of this four million?

A. Yes there was 10 thousand acres of leases.

Q. Where were those located?

A. Largely located in the Hog Shooter District. Then in a separate gas pool in Twp. 25 South 26 North 24 Range 14 I believe. There was 500 million ft. of gas open flow volume on these leases and I don't remember the number of wells exactly—possibly 30 or 40 gas wells.

295 Q. What territory were they supplying at that time?

A. That was a virgin field, no pipe lines there.

Q. Not supplying any municipalities?

A. I would not be sure of that, I think the Heasley Gas Co. had a line to Bartlesville, but am not just sure.

Q. How many gas wells did they have?

A. I just said from memory I think 30 or 40 gas wells.

Q. Over how much or how great a territory were they scattered?

A. I could not say exactly originally, but the field covered a distance of probably 12 miles North and South and 1 or 2 miles wide, mostly in Washington and Nowata Counties.

Q. Were those companies paying when they were purchased in this merger—paying any dividends?

A. Yes, I think they were paying dividends.

Q. Do you know what dividends?

A. The Caney River Gas Co. was paying 10 per cent—the Osage and Oklahoma 8%—The Oklahoma Fuel Supply Co. was either 6 or 8 per cent. I think they had paid 8 and dropped back to 6. The Enid Natural Gas Co. had not been paying dividends, that was the newest company in the merger.

Q. What was the stock issued in these four companies which you took over issued at that time?

A. The Caney River Gas Co. the outstanding capital was 1 million, the Osage and Oklahoma 1 million 500 thousand, The Oklahoma Fuel Supply Co. was 250 thousand and the Peoples Fuel Supply Co. was 100 thousand and the Enid Natural Gas Co. was 200 thousand.

Q. So far as you know has there been any money put into this company from any source, other than the profits arising from the sale of gas and oil since the first original transaction in which the four million dollars was issued in any of the companies?

A. Those other companies had more or less cash put in when they started and I am not just familiar with the original organization of all of those companies. The Osage and Oklahoma Co. I am familiar with. That company when they started bought acreage in the Osage Nation from Goffrey & Galley in Pittsburg at the purchase price of 1 million and a quarter—22 thousand in mortgages and 450 thousand in cash. The stock was sold to make payment in cash. I think the stock sold at \$36 a share. The Caney River Gas Co. had passed through their notes before this merger. Mr. Braden had bought that company from Heasley and his associates in 1910 and at that time he paid 1 million for the property—600 thousand in cash and assumed 400 thousand in bonds. Just how the Caney River was originally I don't know.

Q. How much indebtedness if any, did you take over and assume when taking over these companies?

A. In the Caney River Gas Co. we assumed 500 thousand in bonds which is still outstanding. In addition to assuming stock, and they had notes and back accounts of between 350 and 400 thousand so the entire purchase price including the stock of Caney River was a little less than 3 million. The Oklahoma and Osage Company had no bonds out and practically no indebtedness so that company was transferred for just stock. The other company where we assumed any liabilities was the Enid Natural Gas Co. and we assumed 300 thousand in bonds which are now outstanding in that company.

Q. What is the present indebtedness as represented by mortgages and bonds.

A. The first of the year combined outstanding of all these companies was 1 million 740 thousand dollars. Since that time we have paid 85 thousand dollars.

Q. Since January 1st, 1918?

A. Yes.

Q. In addition to dividends you speak of?

A. Yes. We had a series of bonds, the original first mortgage bonds of the Oklahoma Natural Gas Co. matured March 1st, 1918 or 200 thousand dollars and we refunded that, refunding bond 115 thousand dollars of this company.

Q. You paid that or those amounts and your dividends out of your earnings of the company?

A. We paid that with what cash we had.

Q. Where did you get the cash?

A. From our rates and revenue.

Q. How many million or billion feet of gas did you sell in 1917?

A. In all the states and towns we sold 17 billion 151 million.

Q. How much of this aggregate did you sell to other producing companies which are supposed to be your competitors in the field now?

A. In addition to the deliveries in all the towns we sold approximately 10 billion additional with what we sold — our field sales. That is not accurate, it is just an estimate. We supplied strilling wells throughout the field and the gas is not measured.

Q. Were those drilling operations being made for your special benefit or for just whoever wished the gas?

A. Well, both.

Q. About how much was supplied to others than those drilling for your special benefit?

A. I could not say that any one was drilling for our special benefit except ourselves. We have always made it a practice since getting into this field to supply fuel for drilling wells when those producers have no available casing head gas or low pressure gas that they can use to prompt and encourage production, and it was of mutual benefit because we never knew when some of those were going to drill in gas wells which we would want to buy gas from. However, last winter we had to shut off with all field consumption.

Q. How much approximately, did you sell to other companies that might be classed as your competitors in your field, if any? During 1917?

A. We sold quite a large amount of gas to the Kansas Natural Gas Co., last summer, spring and later in the fall.

Q. Approximately how much?

A. I don't believe I have these figures but I will supply them.

Q. Did you sell nearly 10 billion feet to the Kansas Natural in 1917?

A. I don't think it was that much.

Q. Wasn't it somewhere in the neighborhood of those figures?

A. I will answer it by saying I will supply the exact figures. I have not seen the reports lately.

Q. Can't you give an approximate answer?

A. No I really can't, but I will get you the exact records.

Q. Do you remember it was over 6 billion feet?

A. I thought so last night, but after thinking it over I was not so sure.

298 Q. You didn't look up that item to ascertain something about the amount?

A. No, sir.

Q. At what price were you selling to the Kansas Natural?

A. 10 cents.

Q. Where was that delivered?

A. Practically in the field. It was delivered West of Tulsa.

Q. Did you call any other gas to any other purchasers or companies who might be termed your competitors in the field?

A. Yes, some sales were made in the Blackwell field to the Wichita Natural Gas Co.

Q. How much approximately, did you sell them?

A. Those sales were made through the Peoples Supply Co. we took over in the merger. I have not those figures in mind.

Q. Do you know the price?

A. Yes, it was 7 cents.

Q. Was this gas you were selling to the Kansas Natural during 1917 gas produced on your own properties, or gas over which you held contracts always purchased on property on which you had leased? Or, produced out of the general body of the gas of your company from whatever source obtained?

A. The latter statement would probably be more correct. It was taken from their general pipe line system. It was purchased probably largely from the Bixby district.

Q. How much gas was purchased out of your own sells during the year 1917?

A. We have never measured the gas purchased from our own sells but I testified here on a general average, considering the gas purchased and the gas that we measured in the fields constituting all the gas purchased, we supplied from our own wells about enough to make up the loss from leakage and shrinkage in the pipe line.

Q. Have you made investigation of that or did you speak only from surmise?

A. We have not measured that, it is just approximation. We purchased little less than 25 billion of gas and sold exclusive of sales between these various companies, a little over 27 billion.

Q. Between various companies what did you make?

A. The Osage and Oklahoma in 1917 were buying gas from the Caney River and Oklahoma Natural.

Q. You didn't mean exclusive of the Kansas Natural and Wichita?

A. No, these companies go into the merger.

Q. The aggregate number of cubic feet which pass through your lines would be effected by this raise if granted, would be approximately how many billions?

A. The 1917 would be 17 billion 101 million.

Q. The other day you testified, I believe, that the reason you wished this increase was to run an additional pipe line somewhere?

A. That was one reason, yes.

Q. You estimated that pipe line to run from your present line to the Healdton and Fox field a distance of 75 or 80 miles?

299 A. Yes.

Q. You figured in running the pipe that distance and size necessary to join your compressor station at Wellston and Kelleyville this line would approximately cost 2 million dollars?

A. That was one reason, yes.

Q. Don't you remember the question was asked—Why did you increase—and the answer was to get the money? Don't you remember we asked you then—What money—you said the money to make the improvements costing about 2 million dollars?

A. Yes.

Q. Is it the purpose of your company to make that pipe line extension to the Fox field?

A. Yes, sir. We are working on that proposition now.

Q. Is that the purpose of your company to make that extension?

A. It is the purpose of our company to get the gas wherever we can. We are figuring on that and several other smaller extensions.

Q. Have you not stated in the last 24 hours you didn't know whether the company will make that extension or not, even if granted this raise?

A. I was mis-understood. I said that if we could not arrange for the gas there would not be any need to make any extension.

Q. Did you say you looked over the field and found there was only about ten million feet of gas you could control and you said you could not go down there in the Fox field for that?

A. No, not in that meaning. I tried to explain to the gentleman last night the exact conditions. Of course there are so many things concerning this proposition when you speak of one phase of it, people who hear you are liable to overlook or forget about many other things. At the hearing on May 6th I tried to explain clearly the exact conditions touching in all of this matter in our endeavor to get service and gas. Last night I said the Fox field could only get 10 million feet per day. That was their limit and it would hardly pay to make that extension for ten million feet. We want the maximum capacity of the pipeline. That is what we are building for. I believe we will contract for sufficient gas to fill that pipe line and Judge Ames stated the conditions very clearly.

Q. Didn't you say last night to one of these gentlemen representing one of these cities that you mean to extend your line to the Fox field or South field, but you said you couldn't tell? And didn't you state you just simply didn't know whether to depend upon them to corral sufficient contracts for gas. Didn't you say that?

A. I might have conveyed that idea, but it was not my intention to do it. And gentlemen it hurt me. I was talking about that and the other many difficulties to overcome yet. We have not tied up the gas yet. Our pipe is ordered on very indefinite delivery promises and I had in mind many of these difficulties that we have to overcome, and someone said can't you guarantee a gas supply and build the pipe line. I was simply turning over in my mind what "Guarantee" means. I was trying to tell them frankly and honestly what the situation was.

Q. Didn't you state upon being asked by them, from your best impression and best belief, whether you would build a pipe line and you stated you had to *said* on the sufficient contracts for gas?

Commissioner Humphrey: I think the attitudes of both of these gentlemen is a misunderstanding.

300 Mr. Bennett:

Q. About what amount of gas are you furnishing your customers, domestic and industrial now?

A. Approximately 45 to 50 million.

Q. You have had the consumers, domestic and industrial on your line and fully supplied since what day in this year?

A. I think all the industrials were back on the lines in February.

Q. And haven't been off yet?

A. Don't believe they have. I am not so sure of that, there might have been one or two cold mornings this Spring they might have been held off.

Q. How much of this 17 billion cu. ft. is taken for industrial purposes from your line?

A. The total month consumption for the year 1917 in the towns we are in was 9 billion 862 million.

Q. Assuming that the rate is raised by this Commission 5 cents on the thousand feet, approximately what would your increase be of your receipts?

A. Approximately 500 thousand and we would receive  $\frac{3}{4}$  under our contracts—and a little more because Tulsa is our own plant.

Q. A raise of 10 cents would necessarily mean an increase of about 1 million on industrial alone then?

A. Providing they use that amount of gas.

Q. Assume that you raise the domestic rate 5 cents on the thousand how would that effect your revenue?

A. We sold for domestic consumption in the towns the last year, 1917, 6 billion 241 million, and 5 cent increase would be approximately a little over three hundred thousand, and our company would get  $\frac{1}{2}$  of that in the larger towns except Tulsa.

Q. What is the average price of which you have furnished gas for industrial purposes?

A. The gross average return for industrials was 10.51.

Q. What is the average price you have furnished domestic gas?

A. The year 1917 was 23.52.

Q. That would increase the revenue coming in from your gas approximately 1,000,000 and if you increased the domestic rate by 10¢ on the thousand it would increase your revenue approximately 600,000?

A. Yes sir on the 1917 revenue.

Q. So you would have in for your outlay to make investments and additions you might think profitable, if this raise were allowed even of 10 per thousand ft. on each would be for domestic and industrial, you would have approximately 1,700,000 dollars? Am I wrong in my rigid contention?

A. Providing we sold that quantity of gas we would have that gross increase, but we would not have that money available to make these extensions.

Q. Your revenue would be increased by approximately \$1,700,000?

A. Yes under these conditions.

Q. If you did not extend to the South field or Fox field or Healdton thereby eliminating that expenditure, how much of your 2 million would you have to expend for you to carry out your original program, with this item excepted?

301 A. My testimony was—this 75 miles of 12 inch would cost approximately  $1\frac{1}{2}$  million.

Q. So the increase would pay for your 75 miles of line the first

year assuming you do the same volume of business in 1918, leaving  $\frac{1}{2}$  million for the other extension?

A. My testimony shows we proposed to pay out six or seven hundred thousand of increase revenue to produce and stimulate production.

Q. Your revenues would increase. The amount of money you would take in would be that?

A. Certainly on that comparison.

Q. The matter to which you referred is the increase price you would pay the actual purchaser at the well?

A. That is one of the items I just mentioned.

Q. What is the average price at which you have purchased this gas at 12 months past?

A. In 1917—I believe just under 3 cents each.

Q. What is the lowest contracts you have now for purchase of gas to be delivered to your company?

A. I think  $2\frac{1}{2}$  cents is the lowest, although we have one or two contracts where we done some drilling where we got it for 2 cents. I am under the impression that that gas has been exhausted.

Q. What is the highest price you are under contract to pay for gas for your company?

A. There is one instance of 6 cents now.

Q. How much do you get at 6 cents?

A. Well at the present time we contract on two wells. One at Tulsa. We may be getting  $\frac{1}{2}$  million feet a day now.

Q. That is the only 6 cent gas you are purchasing now?

A. Yes.

Q. Under what kind of contract is the majority of gas sold to your company—Written or oral?

A. Since the failure of the Cushing field, I think the large majority is under contract. We were buying quite a large amount of gas in the Cushing field who would not give us contract.

Q. You mean written contract?

A. Yes.

Q. To what period do these contracts run?

A. We make it a practice to make those contracts for the life of production when we can. Sometimes it is a time contract, but I believe those are in the minority.

Q. The life contract is to deliver the gas for the life of producing wells and is in the majority?

A. Yes.

Q. You name some other expense in addition to the expense of additional amounts which you say you might be compelled to pay the purchaser of gas. What were those?

A. A general increase in our operating expenses over the field. We will have to increase drilling expenses.

302 Commissioner Humphrey: I think we have in this record now the figures as to the increase of office expense and daily labor.

Q. Can you state what your custom is with reference to drilling wells on your property—with reference to what account you charge for drilling gas and oil wells?

A. Yes, we have been charging labor of drilling and expense on gas wells to the gas account. All the equipment to capital account on producing oil wells.

Q. Do you give the Oklahoma Gas Co. credit on the gas account for oil wells that are brought in and for the production and the proceeds of the production where you improve your own property?

A. No there is no interchange.

Q. We run an oil and gas division and receipts go into the General Treasury.

Q. Did the exhibits show that?

A. Just as you see it stands in the exhibit is for gas.

Q. In the event you drill a dry hole you charge that to the gas account as expenses?

A. No that depends upon when we are drilling on an oil lease, that goes into the oil expense.

Q. How do you determine whether you are drilling for oil or gas. Do you always drill for gas on gas and oil for an oil leases and take whatever you find?

A. It depends upon the surrounding operations. If we decide to drill a well and it is an offset to gas well we drill for gas, we might get oil and visa versa. If we drill for oil and that comes in a dry hole we figure that is oil expense. If a gas well or attempt at gas well comes in dry we charge that in the gas expense. As a rule, to make it wholly clear—When we get out and wild cat probably 95 per cent of the time we are wild catting for gas. I don't recall where we have ever wild catted for oil. So, where we get ready to drill on the report of a geologist or for some other reason in the minds of our managements that they think is a good place to drill, if it is a dry hole it would go to gas expense.

Q. I believe you stated the other day your combined acreage average you hold leases for gas purposes add about how much—600,000 acres?

A. About 200,000 acres yes.

Q. Over how much of this 200 thousand do your actual operations extend as to gas?

A. It is very small. We have 107 thousand acres in the Osage and it depends upon how much acreage you would figure that dry holes would show in test. It is very indefinite and very hard to tell what your operations would cover in acreage; what acreage you had definitely tested and developed. You see we go out in the Osage and we might go 2 or 3 miles in advance, we have been doing that this last year in many cases—wild catting as a rule and the majority of these tests have been dry. As to what amount of acreage you consider we have tested is very hard to determine. There are many instances where producing wells have been drilled next to dry holes and visa versa.

Q. You carry the payment of all of these charges on rental on the 2,000,000 acres, whether developed or undeveloped, against the cost of production of gas in fixing your idea of the rate which you should have from the Commission?

303 A. Yes I think the carrying cost of all that acreage is included in our figures of expense, until it costs up to where there is royalty on it. As I said the greater part of our business is gas.

Q. Were any of the officers of your company officers, directors or stockholders in any of your companies you took over in 1917?

A. Yes.

Q. How many of them?

A. There was Mr. Braden. He was interested in the Caney River, the Osage and Oklahoma, the Peoples Fuel Supply and Enid Natural.

Q. That is all of them?

A. No that doesn't count the Okla. Fuel Supply.

Q. All the others were in the same position in connection with the other companies?

A. Mr. Heasley was a director of the Okla. Natural, was also interested in the Okla. Fuel Supply. I think he was President. And also the Peoples Fuel Supply.

Q. What position in the latter company?

A. I think just a director. He was not interested in any of the other companies.

Q. Who else?

A. Mr. Evans, J. H., the same as Heasley was interested in the Okla. Fuel and Peoples Fuel Supply. I don't think he was interested in any of the others. Mr. J. B. Ritts I think was a stockholder in the Okla. Fuel Supply, but not in any others.

Q. Was he an officer in your company?

A. A director yes sir, and also Vice President of our Company. I am not sure but I don't think he was an officer in the Oklahoma Fuel but just a stockholder.

Q. Any others?

A. R. W. Hannan was a stockholder in the Osage and Oklahoma and also the Caney River and director in the Oklahoma Natural.

Q. Was he director in either of the other companies?

A. Yes in both of those companies.

Q. Any others?

A. I think Mr. Sharp was interested in a small way in the Osage and Oklahoma and I am not sure if he was, if he was it was in a very small way, but not a part of the management. I am leaving myself to the last. In my own case I was a stockholder in the Caney River, the Osage and Oklahoma, the Peoples Fuel Supply, the Enid Natural. Represented officially in all of these companies. Director and officer.

Q. I ask you as a matter of fact if the majority of the stock in all of these companies was not owned and controlled by the directors and the majority of the directors of the Oklahoma Natural?

A. In the case of the Caney River, Mr. Branden and myself control that. That is the majority of the stock. Just about one half.

The Osage and Oklahoma we had in control to quite a large extent. Braden and Hannan and myself, our holdings were 25%.

Q. I ask if the majority of the subsidiary companies were not stockholders or directors in the Oklahoma Natural?

A. No we had 7 directors in both the Osage and Oklahoma and Caney River, and three of those were the main directors in the 3 companies.

Q. Yes that is the same. I understand you now.

A. Do you know approximately how many feet of gas you furnish to glass works in 1917.

304 A. No we did not furnish any direct. We were supplying the city of Sapulpa and I believe through that distributing plant they supplied more or less to one or two of those glass factories, but we don't have any access to any of their detailed records. We sell at a fixed price at the city limits and have nothing to do with the distributing plant, although last winter or last fall I think in October, they supplied, without permission, the Central Light and Fuel Co. at Sapulpa which supplied the Glass Co. for 2 or 3 weeks and they paid domestic rates.

Q. I notice in the statement you furnished the Commission that you make a deduction for deterioration as I remember it, of \$986,964.30. How do you arrive at that depreciation?

A. I believe I explained that when I filed the statement. That is just deterioration of 10% on the other exhibits as to the capital, pipe line and equipment of the company.

Q. You deduct 10% of the entire amount of your holdings including your real estate, your pipe lines, offices and equipment, your leases and deduct 10%.

A. Yes that was a rough estimate.

Q. Just a surmise or guess?

A. Yes.

Q. Do you have any idea your real estate has decreased 10% since you made that?

A. Our real estate is so small it doesn't amount to a great deal. Possibly it increased some, I don't know.

Q. You put in an item of stock on hand in your warehouses didn't you?

A. I believe I explained that. A large part of the stock on hand in warehouse is in use and has not been analyzed.

Q. Did you have any idea that had depreciated 10% when you made that allowance?

A. We are practically certain that that material has depreciated 10%.

Q. Did you say on direct examination most everything you use in the construction and maintenance of your company's line has increased 100%.

A. I was speaking of the natural depreciation of the pipe and equipment.

Q. Don't you think that has kept up with the price in advance made?

A. If we have a pipe line in the ground ten years and it is rusted

out, no matter what the price is it is selling for, it is not worth anything.

Q. The main line you say cost 37 or 39 thousand dollars, when was that put in?

A. That is in one particular main line alone. Our original trunk was installed in 1907 and finished in 1908; the line to Sapulpa and Okla. City.

Q. You indicated in your cross examination the life of those pipes is almost indefinite?

A. Oh, no. You are talking about the pressure units.

Q. Didn't I talk about both?

A. If you did I misunderstood you. The fact is there is a varied opinion about that.

Q. What is yours?

A. It runs from 5 to 10%. I find in some parts of the state there is a different proportion in our pipe line when it comes to depreciation of 10% and other places it possibly is not as high and might be more depending upon the soil.

305 Q. Did you take that into consideration at the time you were selling gas under the orders of this Commission from the beginning of this Company, in fixing your rates?

A. We have never had any rates fixed on this property on the value of the pipe line and property. The rate in effect now is the one put into effect ten years ago.

Q. You in a measure fixed that rate on the property which you then had on hand, all subject to depreciation, just the same as those?

A. We know the property would be subject to depreciation when we built the line. The depreciation charge there is different from amortization or reserve. That 10% we are talking about is an estimate percentage of depreciation of pipe. That is so arranged to give us back our capital after the gas is exhausted.

Q. To pay for that pipe after it is worn out? That is the same thing.

Q. That simply in other words—pay me the money you paid for your pipe after it has worn out?

A. Yes sir.

Q. Are the officers and directors of your company, officers or directors in these various distributing companies in the towns through which your lines run?

A. As far as I know there is absolutely not connection between these distributing companies with which we have contracts. I don't know of any of our stockholders that hold stock in any of those companies.

Noon.

Court adjourned until 1.30 P. M.

(Same witness—Mr. Bartlett.)

306 By Mr. Bennett:

Q. I understood you, in your statement the other day which you made incidentally to your contention that your rate should be raised by this Commission, that one of the main reasons why you would contend for the raise, was the peculiar position of the existing conditions now, with respect to fuel and man power and to coal in particular. And in that testimony as I remember, you stated it was a patriotic duty for your Company, as well as all such companies, to see to it that as little coal was used as possible on account of the necessity of using coal in our war operations, and the way to do that was to force as large a use of gas as possible throughout this state. Am I correct in quoting you?

A. Yes, I said if it was not for those conditions recited it would be best to cut all the gas used in this state and conserve for domestic use.

Q. As a step in that connection you contend a rate to industrial users for gas should be 250 per cent.

Objection entered by Mr. Richardson: On the ground of same being purely argumental.

Commissioner Russel: You are missing something over 100 per cent in your contention. It should be 150 instead of 250 per cent.

Question (continued). —25 cents instead of 10 cents per thousand cubic feet, is that one of the steps that you have contended to make the people use less coal?

Commissioner Humphrey: Gentlemen let's get down to fact. We will get our information and facts out of this testimony when we begin to write the order. These other things will be passed over. This doesn't tend to help the Commission on information required to write our order on. All except evidence testimony will be passed over.

Q. As I remember your counsel stated that you thought it perhaps wise to cut off all industrial gas?

A. We have considered that very seriously many times.

Q. That will necessitate the industrials going on coal won't it?

A. Yes.

Q. That is the particular fuel to which you had reference to when you said it ought to be conserved the other day?

A. Yes sir.

Q. What would you do with that surplus of gas that you have now on hand and are producing daily, if you cut off your industrial consumers, or the equivalent of the same things if your rate is prohibitive?

A. The primary object of cutting off the industrials would be to conserve it for domestic use.

Q. What would you do with that you have on hand if you cut off the industrial users?

A. We now do not have any large surplus. In the first place we would shut it in proportionately all over the state.

Q. You say you are selling about 50 million to users today, about how much gas to domestic users?

A. Considerable less than one-half, this time of year.

Q. About how much is used by industrial users.

A. 35 or 40 per cent possibly.

307 Q. What would you do with this gas if the industrial users went on coal or the rate was prohibitive?

Commissioner Russell: If that was necessary, how would you shut it in?

A. Just crack the gates on the wells.

Q. Mud it in?

A. No we would just shut it in in the wells. Cramp the gates down.

Q. You would conserve that for domestic use, that would be your intention?

A. Certainly.

Q. You have a supply then adequate for domestic use?

A. We are having no trouble at the present time, even in furnishing both at this time.

Q. Isn't it true that you cut off your industrial users and shut in these wells that other industries would take that gas instead of yourself which would deplete the body of gas in this state just as completely as if you took it?

A. The state law protects that.

Q. Is not the industrial rates at Wichita Falls more than you are asking right now?

A. I believe that rate is 22 cents.

Q. Assuming that you shut in all this excess gas and do not get any revenue from the investment on equipment to handle same, can you give the Commission an adequate idea of how high a domestic rate for gas would have to be in order to meet the loss of this industrial gas?

A. It would have to be very high.

Q. In figuring the depreciation on your plant each do you figure that each year regardless of how many years that percentage has been deducted?

A. That is shown in the reserve column, it is not deducted again. We have not been deducting the regular depreciation each year in the past.

Q. Was that an oversight?

A. I explained that. The present rates are only temporary rates. This is a voluntary rate we made, different from the franchise.

Q. How many gas-line plants have you on your lines and what has their production been and expense of their operation and return from them?

A. We have regularly 8 operating plants on the line that we built and own and there are two other plants on the line now by outsiders. The parties who own these two have nothing to do with the Company. One is located at Oklahoma City and the other in the Okmulgee

Field. We have two in the Cushing field, one at Kellyville and one at Stroud and 2 in the Blackwell field one at Morrison and one at Bixby.

Q. You realize a profit from the operation of them?

A. We are not sure of it.

Q. You keep book- on it?

A. Yes but we are in litigation with the Standard Oil Co. now over with their claim in a- infringement of option, and we don't know just what we will do.

308 Q. Do you credit these profits up in finding the basis upon which to fix an equitable rate for your customers?

A. It has always been our understand- that the gasoline and oil business should be considered as public service business. In keeping records we have a record of our gasoline and gas and oil business, but they are not consolidated.

Q. Are these accounted for in arriving at your gas rate?

A. They are not in our report filed before, as I explained.

Q. If you made a profit you have not given credit for it on the leases and rentals to be paid for?

A. On the majority of gas we purchase.

Q. Can't you give the Commission an approximate estimate of the profit made on those plants?

A. I have a statement here to file which was requested at the other hearing.

Exhibit "X" is hereby filed, as requested at hearing on May 6th.

Q. What does that have reference to?

A. To 1917 business.

Q. What profits does it show?

A. It shows a total gross revenue of 315 thousand dollars and net revenue of 81,978.18. The actual labor and operating expense of running these plants is \$55,590. We have set up a reserve for depreciation of \$70,000. Also 10 per cent as our administration charge or expense, salary of officers, Supts., ect. \$23,210.92. This report shows for itself.

Q. What becomes of the profits made by the operation of those plants?

A. They go into the general funds of the Oklahoma Natural.

Commissioner Humphrey: Is that a part of the basis of the 2% dividend you have — declaring?

A. That would come out of that, it is all in the same fund.

Q. Have you employed a firm of attorneys or accountants to make an estimate of your physical and tangible properties in order to place before this commission the basis upon which you ask this raise?

A. Yes we retained Price, Waterhouse and Co. to make a regular audit, making a request for some special information and when they failed to get this for us in the form we wanted we went ahead and secured other accountants or engineers to get this for us. They are working on it now. It will be complete inventory. Price Waterhouse and Co. worked three months on their report.

Q. Did you instruct them in writing what you wished them to do.

A. Yes in my letter I told them we were about to apply for in-

crease in rates and while making that out we wanted to make a report to file with application.

Q. Then you didn't request them to make a valuation of your property and plant, etc.?

A. I don't think it was in those words. That was in my mind but evidently was not what was in the minds of the auditors for they didn't do it.

Q. They proceeded three months without your knowledge they were not making that report?

309 A. In April in checking with their chief accountant I found that they were not preparing the proper account we wanted and then we took it up with these engineers in Chicago, and employed another firm of engineers to make it.

Q. Did you ask that to be filed within any specified time?

A. We asked them to rush it as much as possible, that it was urgent.

Q. You have not the report now?

A. They are working on it now.

Q. You had a report on May 6th from the first firm of accountants was that for 1917 business?

A. Yes.

Q. Did Price, Waterhouse & Co. make a balance sheet of your books, and will you furnish the respondents a copy of it?

A. Yes, I have one copy of it. We didn't file that of Price-Waterhouse & Co. because the other firm had started it in April. We thought we would only have 3 sets of figures to deal with and it might be confusing, and besides this report does not show an inventory of our properties, it is just a check of our books.

Q. Will the second firm cover the whole situation?

A. Yes they are experts in that line, and I found the other people were not experts.

Q. May we have the Price Waterhouse & Co. expect to make a copy for ourselves?

A. I think so.

Q. Do you know the average cost per thousand feet of your gas customers, domestic and industrial in 1917 was?

A. The gross average was 15.67 and our proportion was 12.68. That is that we received.

Q. Can you give the approximate amount of increase revenue received by your Co. if the Commission should allow you an increase of rate of 25¢ as minimum and 40¢ maximum. What would be the average of gas you would receive from now on?

A. That would be the same figures I just gave of 15 cents—that would make an average return to us of 23 or 24 cents, total.

Q. What would that be in 12 months?

A. Based on last year's business at 10¢ would be 1,700,000—at 11¢ \$1,870,000, at 12 cents close to two million dollars.

Q. That doesn't take in gas furnished industrial users and municipalities such as Kansas Natural?

A. We are not furnish- any gas there. That has been cut off for months. It is just drilling and wells now.

## Corporation Commission.

## Consolidated General Balance Sheet Electric Light, Power, and Gas Utility Companies as of January 1, 1921.

## Current Assets:

Cash .....	\$9,617.52
Accounts Receivable (General).....	152,649.83
"    "    From sale of gas, Gasoline & Oil.....	760,814.07
Material & Supplies.....	882,362.42
Prepaid Accounts.....	21,466.67
Liberty Bonds.....	156,700.00
Treasury Stock (O. N. G. Co.).....	13,675.00
Advance to Agents & Employees.....	12,804.09
Deferred Charges.....	8,690.28

## Capital Assets:

Fee Lands.....	\$73,521.00
Leaseholds .....	3,446,638.74
Pipe Lines.....	5,367,234.00
Rights of Way.....	55,354.96
Gas Well Pipe & Equipment.....	262,439.51
Gas Meters.....	359,591.77
Orifice Meters.....	14,927.58
Tools & Machinery.....	59,680.97
Telephone & Telegraph Lines.....	9,671.17
Compressor Station Bldgs.....	58,976.36
Compressor Stations.....	405,326.16
General Structures.....	146,783.61
Sanitary & Water Systems.....	48,665.70
Office Furniture & Equip.....	49,767.96
Laboratory Equipment.....	204.38
Other Tangible Capital.....	4,744.84
Other Intangible Capital.....	8,387.79
	<hr/>
Material & Equipment of Osage Lease.....	409,768.00
Highway Equipment.....	102,649.96
Cleaning Out Tools.....	311.15
Pulling Machines.....	8,467.30
Oil Investment (not classified).....	417,386.91
Gasoline " " ".....	339,632.38
	<hr/>
Less Depreciation.....	757,019.29
	<hr/>
	659,068.29
	<hr/>
Total .....	\$13,570,961.08

## Current Liabilities:

1 Notes Payable.....	460,197.31
2 Accounts Payable.....	357,564.69
3 Matured Interest on Funded Debt Unpaid.....	.....
4 Miscellaneous Matured Interest Unpaid on Security Deposits.....	14,609.90
5 Gas Purchase Payable.....	234,006.39
6 Dividends Unpaid.....	357,480.63
7 Consumers' Deposits.....	252,662.14
8 Advance Payment Drilling Gas.....	133,784.29
Capital Stock (Issued).....	14,300,000.00
Funded Debt.....	1,208,000.00
Accrued Interest on Funded Debt Not Yet Payable.....	23,239.12
Due Controlling Companies for Advances.....	.....

## Reserves:

For Replacement and Renewals.....	.....
To Cover Sinking Fund.....	.....
For Extension and Improvements.....	.....
Accrued Taxes.....	335,947.67
Adjustments.....	3,236,750.83*
Profit and Loss Surplus as at January 1st, 1920 \$24,793.80 Deficit for the Year 1920 894,574.03*.....	869,780.23*
	<hr/>
Total Liabilities.....	13,570,961.08

## CREDITS.

Domestic Gas.....	\$3,200,477.33
Industrial Gas.....	1,249,884.91
Drilling or field gas.....	1,206,622.68
Wholesale Gas.....	130,936.74
Miscellaneous.....	15,118.76
Oil Sales.....	329,502.14
Gasoline Sales.....	190,967.62

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\$6,323,510.18

## DEBITS.

General Expense.....	\$267,008.02
Production & Transmission.....	1,621,170.53
Distribution .....	203,465.98
Gas Purchased.....	1,560,679.91
Taxes .....	497,012.26
Miscellaneous .....	105,109.59
Interest on Funded Debt.....	76,887.92
Interest on Notes.....	10,958.19
Depreciation & Depletion.....	981,145.66
Oil Expense.....	322,858.04
Gasoline Expense.....	141,981.97
Dividends .....	1,429,806.14
Deficit for the year (Red).....	894,574.03

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\$6,323,510.18

## Disposition of Net Corporate Income.

## Dividends Declared:

(a) On Preferred Stock.....	None
(b) On Common Stock.....	\$1,429,806.14
Interest on Funded Debt Accrued & Notes Payable.....	87,846.11
Additions and Betterments charged to Income.....	.....
Appropriations to Reserves.....	.....
Miscellaneous Appropriations Depreciation & Depletion.....	981,145.66

## Certificate as to Construction Account.

Total Amount Charged to Construction Accounts to February 1, 1921.....	.....
Total Net Charges to Construction Accounts for the period from Feb. 1, 1921, to Feb. 1, 1922 .....	.....
Total charges to Construction Accounts on January 1, 1921 as shown by and in accordance with the books and records of this company Suspense Construction.....	\$950,925.85
If Plant has changed hands within the preceding year, state all of the facts relative thereto and the amount of purchase price. (The facts relative to the sale of the plant may be reported upon separate sheets, the sale price must be shown here, and in the event the plant did not change hands this fact should be so stated) .....	

Profit and Loss Surplus as at January 1st, 1920	894,574.03*
Total Liabilities	13,570,961.08

#### SCHEDULE "A" (Continued).

Name of Company Oklahoma Natural Gas Company.  
Under Laws of What State Organized Oklahoma.  
Date of Organization October 12th, 1906.  
Location of Principal Office Oklahoma Gas Building, Tulsa, Oklahoma.  
Name and Address of Secretary L. C. Ritts, Tulsa, Oklahoma.  
Chief Managing Agent in Oklahoma G. T. Braden.

Gross Receipts for Last Year—Gas	\$5,803,040.42
Gross Receipts for Last Year—Oil & Gasoline	520,469.76
Total Expense of Operating Plant Last Year—Gas	4,342,292.40
Total Expense of Operating Plant Last Year—Oil & Gasoline	464,840.01
Total Expended for Improvements and Additions Last Year—Electric	None
Total Expended for Improvements and Additions Last Year—Gas	633,791.22
Par Value of Stock	25.00
Market Value of Stock February, 1920	26.50
Dividends Paid Last Year	1,429,806.14

The above makes no allowance for Depreciation and Depletion.

The Company was required to borrow a part of the money with which to pay the dividend. A part of this dividend was paid out of the proceeds of a lease which the Company sold.

#### SCHEDULE "B."

##### Oath.

STATE OF OKLAHOMA,  
County of Tulsa, ss:

I, J. E. Dalious being first duly sworn according to law, depose and say: That I am the Auditor of Oklahoma Natural Gas Company, that as such I am acquainted with the books, records, accounts, and affairs of said Company and know the accompanying statement, marked Schedule "A," to be true and correct as per tax schedule on taxable property leaseholds included.

Subscribed and sworn to before me this — day of April 1921.

#### State Board of Equalization.

State of Oklahoma.

Oklahoma City, Okla., — —, 1922.

The State of Oklahoma to — —:

Pursuant to the provisions of Section 7348, Revised Laws of Oklahoma, 1910, and all amendments thereto, you are hereby requested to furnish the State Board of Equalization of the State of Oklahoma, a Schedule of the Assets and Liabilities of your company as of February 1st, 1922; also statement of Profit and Loss Account, showing disposition of Net Income from December 31st, 1920, to December 31st, 1921. This information to be furnished in the accompanying form marked Schedule "A." You are further requested to show in the form provided for that purpose, additions to construction accounts from February 1st, 1921, to February 1st, 1922, also give answers to interrogatories relative to organization and operation of plant.

You are further requested to furnish the foregoing information under oath, form of which is attached hereto and marked Exhibit "B."

You will make due return hereof to the undersigned at Oklahoma City, Okla., on or before the 1st day of March, 1922, and hereof fail not.

\_\_\_\_\_,  
Clerk State Board of Equalization.

NOTE.—All explanations of Accounts and Statements as to conditions of properties should be made on separate sheets and accompany this report.



Q. When did your Co. move into the El Reno and begin furnishing them gas?

A. About 2 years ago. A year ago last summer I believe.

Q. Is that the last town you cut your line to furnish gas to?

A. Yes in this system—El Reno and Yukon.

Q. You furnished as I remember your testimony, gas to the Kas. Nat. During the night after Nov. 1917?

A. I *this* so.

310 Q. Did you, or did you not remember that the Osage and Oklahoma to which you paid in Oct. 1917, at the rates of 1½ million and perhaps assume some indebtedness, that it was the purpose of your corporation was assessed at 600 thousand dollars that year?

A. I think it was about that but I am not sure.

Q. You cannot give the separate assessments of these companies?

A. Last year these combined companies were assessed at about five million dollars, but I haven't in mind the separate figures.

Q. Do you remember the valuation you placed on that property at the time you applied for new increase in rates at Tulsa in '17?

A. I don't remember those figures exactly. They figured out the depreciation and it seems to me it was somewhere near 500,000 dollars but I am not sure.

Q. In most cases where you delivered gas to compressors in this territory you did not own the distributing company?

A. We do not own the distributing plant in Oklahoma City, El Reno, Wagoner, Enid, Shawnee, Muskogee and Yukon.

311 STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

P. E. Glenn, of lawful age, having been first duly sworn on his oath, deposes and says that he is acting Secretary of the Corporation Commission of the State of Oklahoma, and as such has charge of the books, records and general files of said Commission; that the attached and foregoing transcript showing the evidence of R. H. Bartlett taken before the Corporation Commission on May 6, 1918, is a true and correct copy of the official transcript of said testimony taken at said time.

P. E. GLENN,

*Act. Secretary of the Corporation Commission.*

Subscribed and sworn to before me this 25 day of January, 1922.

[SEAL.]

J. S. GRAM,

*Notary Public.*

My Commission expires Jan. 1, 1923.

Endorsed: Filed in District Court on January 25, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

(Here follows consolidated general balance sheet, marked page 312.)

313 STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

I, F. C. Carter, State Auditor for the State of Oklahoma, do hereby certify that the within and foregoing is a true and correct copy of the schedule of the assets and liabilities of the Oklahoma Natural Gas Company, a corporation, as of January 1st, 1921, as shown by the record and files in the office of the State Auditor of the State of Oklahoma.

F. C. CARTER,  
*State Auditor.*

Endorsed: Filed in District Court January 25, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

314 In the United States District Court for the Western District  
of Oklahoma.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and S. P. Freeling, Attorney General of Oklahoma, and the City of Tulsa, a Municipal Corporation, and Frank E. Duncan, its Attorney, and The City of Sapulpa, a Municipal Corporation, and Le Roy J. Burt, Its Attorney, and The City of Claremore, a Municipal Corporation, and F. W. Holtzendorff, Its City Attorney.

*Affidavit.*

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

I, W. E. Grimes of lawful age, on his oath, says: I am Auditor for the Corporation Commission of Oklahoma; I have taken occasion to examine the transcript of the testimony and the exhibits offered and introduced in evidence in Cause No. 12894 before the Corporation Commission of Oklahoma, the same being the application of the Oklahoma Natural Gas Company for a valuation of its property and a readjustment of its rates, which said cause resulted in the making of Order No. 1886 of the Commission; among other things said records show the following facts to have been adduced and put in evidence supported by oath of witness, as follows:

One T. E. Dalious placed on the witness stand by the Oklahoma Natural Gas Company and testifying on its behalf, testified, (Record page 1134) respecting the gas purchased by the Oklahoma Natural Gas Company for distribution in its lines during the year 1920, and said: "The total amount of gas purchased for the year 1920 was 20,764,723 M cu. ft." Said Dalious introduced in evidence as hav-

ing been prepared by him and under his supervision, an exhibit which was marked "Daliou Exhibit #21" purporting to be a "Statement of all gas sold during 1920 covering the entire system" and a statement of "Deliveries to and Sales of Agency Towns for 1920" wherein on Sheet 1 under the heading "Grand Total of all Gas for 1920" it appears that the total amount of gas sold by the 315 Oklahoma Natural Gas Compañt during the year 1920 was 20,030,786 M cu. ft.

At page 1135 of the transcript of record, the following colloquy appears to have taken place between Chairman Russell of the Corporation Commission and Judge Richardson appearing at the hearing as Attorney for the Oklahoma Natural Gas Company.

"Chairman Russell:

Q. What is the difference between the gas purchased and the amount sold?

Judge Richardson:

A. The gas sold was 20,030,786 M cu. ft.

Chairman Russell:

Q. Now how much gas was purchased?

A. 20,076,472 M cu. ft.

Q. Then you didn't quite produce the leakage?

A. The gas used in the operating plants is in that. The company uses over one billion cubic feet per year in the compressor stations, we use about 3 million cu. ft. per day.

Q. That is one of the most disquieting things in this entire connection. It takes about one and one quarter million to purchase the gas for your own consumption.

A. The gas reproduced we estimate cost us about twenty two to twenty three cents per M cu. ft. to produce it, but there *is* a very serious question of shortage last winter and the thing to do was to drill, drill, drill, and we drilled. \* \* \*

(Record 1136).

Q. How about the drilling gas; over one and one quarter million feet of it?

A. Yes, that is true.

Q. It would take over five million or five billion cubic feet of gas to pay for that.

A. There is in evidence here a statement of the wells we have drilled and also the wells that we have purchased or had to take over in the Osage.

Q. But there is an unquestionable loss of the gas that goes in at one end isn't shown at the other end of the line.

A. That is true.

Said Daliou introduced in testimony as having been prepared by him and under his supervision, an exhibit purporting to be "Profit

and Loss and Expense Statement for the year 1920" of the Oklahoma Natural Gas Company, the same being marked "Daliou Ex-  
 316 hibit #20." There appears a general operating expense item of \$267,008.02 and a production operating expense of \$1,247,433.05. As for gas purchased, \$1,560,679.91. Basing my interpretation upon my experience as an Auditor and familiar with such statements as that in which the above items appear, I interpret said items to indicate that the company incurred an expense of \$1,247,433.05 in the production of the gas produced by it and that the total amount paid by it for gas which it purchased for distribution and sale was \$1,560,679.91. In other words, approximately one half of the expense incurred in procuring gas which the Oklahoma Natural Gas Company sold was incurred in the production of gas produced by the company, and the remaining one half being the cost of gas purchased during that year, whereas the volume of gas purchased exceeded the volume of gas sold during that period.

It is shown by the record that the Oklahoma Natural Gas Company is paying for gas which it purchases, as distinguished from that which it produces, at the rate of ten cents per M cu. ft. Mr. Sharp testified, record page 562, as follows:

Q. What do you say the gas you get from the Osage field cost your company including the royalty and the price you paid to the land that you drilled oil wells upon which you claim you have a right to take the gas?

A. We wish that no oil wells were drilled on our property, we had rather drill our own gas. The average oil producer wastes more gas than it would cost us to drill it. I could not tell you the amount of that exactly, but the gas we develop ourselves cost us 15¢ per M ft.

At page 811 of the transcript, the same witness testified:

Q. Of what gauge of pressure do you purchase gas from these parties that you purchase gas from?

A. On a two ounce basis.

Q. What price do you pay for the gas at that rate?

A. Ten cents.

Q. And you sell the gas on a four ounce one hundred per cent basis. Is that right?

A. Seventy five or eighty per cent is on eight ounce, taking the year as a whole, the twelve months.

Q. Don't you have a uniform basis for the entire year?

317 A. No sir.

\* \* \* \* \*

Q. Then the peak load days, that goes down to less than one ounce at your station.

A. Yes, sir."

\* \* \* \* \*

The same witness testifying, record page 903, as follows:

“Q. You say you spent approximately \$855,000 in the last year for drilling operations?

A. I believe that was up to August 1st. It may have been September 1st.

Q. \$350,000 of which was spent in the Osage?

A. Approximately \$300,000 at that time but we have drilled several wells since that time.

Q. And you have spent about half a million dollars outside of the Osage?

A. It would run about 600 or \$650,000.

Q. Do you know how many wells you drilled?

A. I testified to that at Tulsa. I don't remember now.

Q. I don't recall you testified to that.

A. I believe the number of wells we drilled and took over was between sixty and seventy.

Q. Between sixty and seventy wells?

A. As near as I can remember.

Q. How many dry holes did you drill?

A. I can tell you in the Osage. I can't tell you on the other as I haven't the data.

Q. I mean outside of the Osage.

A. I don't have a record of dry holes. I would say the majority of them, by far. I think we have drilled something like thirty dry holes this year. We drilled thirty dry holes out of the first forty wells we drilled this year.”

The foregoing testimony was given on December 2, 1920. The same witness testified that in 1917 (Record 514), at the time of the merger of the Osage and Oklahoma properties with those of the Oklahoma Natural Gas Company, “We had drilled twenty-one  
318 straight dry holes on the Osage lease and we had lost a lot of money on it. \* \* \*

While the same witness was on the stand, the following interrogations and colloquies took place. (Record 831).

Q. You remember at a former hearing you were discussing the effect that a reversed graduated scale would have on the earnings of the natural gas company and you promised to submit three estimates. Have you prepared those reports?

A. I told you judge, after the hearing, that I wasn't an auditor and didn't pay any attention to that and it wouldn't do any good to submit them for the simple reason the Commission would not take that into consideration. There is no use of us telling the Commission we need a dollar a thousand for gas because they will figure that up and see what we are entitled to. We are entitled to a reasonable return and are entitled to make a reasonable return.

Commissioner Echols: Read that question please.

(Reporter reads question.)

Commissioner Echols: As I understand your answer, you haven't prepared them?

A. I haven't prepared them. I might go ahead and say we need a dollar a thousand for gas.

Commissioner Echols: It is just a matter of mathematical calculation.

A. Yes, it is a matter of what we are entitled to and it is only a matter the Commission will consider. I might say we should have a million dollars to go out and gamble on additional wells and lines and so forth, but how far would that go with the Commission to get a rate."

The witness Dalious testified: (Record 1022) "We charge the drilling to expense after the job is complete."

Other portions of the record show, Dalious Exhibit #30 introduced as having been prepared by or under the supervision of the witness Dalious purporting to be "Statement of Drilling and Purchase Wells Charged to Production Expense During 1920 as shown under Caption Production Expense Schedule #1, Exhibit #20" on the first or Summary Sheet, a total of \$525,654.34; the total of the analysis sheet, the first being "Analysis of Cost of Drilling Wells that was charged off during the year 1920, wells drilled by the Oklahoma Natural Gas Company, Completed Wells, Total \$224,536.42.

On the second sheet, "Analysis Cost of Wells Purchased during the year 1920," total cost \$64,479.82. Sheet 3, "Analysis of Cost of Drilling Wells that was charged off during the year 1920 Covering Incomplete Wells, Wells Drilled by the Oklahoma Natural Gas Company," Total cost \$236,618.10; Grand Total shown by Summary Sheet \$525,654.34.

An analysis which I have made of the production property accounts from exhibits introduced by the Oklahoma Natural Gas Company in said cause, purporting to be an inventory of the production property of said company, includes all gas producing acreage from which the company either was at the time producing gas as well as leases and acreage held from which no gas was being produced.

\* \* \* \* \*

In the original costs exhibits introduced by the Oklahoma Natural Company in said cause by its witness Mr. Gayle, the witness testified, (Record 86) that \$16,190,382.40 represented the actual out-of-pocket cost of the property of this company, of which the investment in the Gasoline Division was \$221,322.61, and in the Oil Division was \$249,906.22. (Record 87.)

On cross examination respecting this matter, the same witness testified:

Q. That includes the entire expenditures for drilling wells, does it?

A. It does.

Q. Have you any means of knowing from that data which of those wells were dry and which were either producing oil or gas?

A. This exhibit does not show that information. It is my information, however, that that is to be shown.

Q. What?

A. It is my information that that is to be shown but this only goes to show the actual out-of-pocket costs to the company. It does not separate or differentiate the dry from the producing wells.

\* \* \* \* \*

A. Of the total \$16,190,382.40, the production division I have charged with \$6,948,431.21.

Q. The production?

A. That is the production division.

320 Q. What would be included in the production division outside of the leases and the drilling of wells.

A. That would be all material that went into the wells to furnish the gas up to what we call the mouth of the well. That is the termination of the production division.

Q. What is the lines from the wells to the main lines? That is the lines from the wells to the main lines?

A. Yes.

Q. That would just include the gathering lines and the casing in the wells would it not?

A. That is \$6,948,431.21.

Mr. Henshaw:

Q. The drilling of the wells, does that just mean the labor expenditures in drilling the wells?

A. That is all.

Q. That doesn't include the casing?

A. Oh, not, that would come in the production division. The next item is the transmission division. That is \$6,855,339.33.

Commissioner Echols:

Q. The main transportation lines?

A. The main transportation lines up to the distributing plants. The next is the distribution system and that is \$1,463,324.78.

Chairman Walker:

Q. Under what heading, Mr. Gayle, would you have your compressor stations; the largest stations?

A. That is transmission, I am sure. I have that, however, separated in the back of the book here and itemized.

Mr. Henshaw:

— What we commonly understand as drilling wells, includes the drilling of the well and the total equipment ready to deliver the gas to a connection at the well and not necessarily gathering lines.

A. That would be in that case—that would be production and your drilling.

A. That includes—including those items you have mentioned, I mean that is what is commonly called drilling wells, that would increase your drilling item up to something around five million instead of two hundred thousand?

A. Yes sir.

Q. The explanation of how that has been handled in reference to charges made to depleted wells where they are replaced with new production, whether that is charged to capital or to operation expense, that would be explained later on?

321 A. No. The operating expense part of it would be explained later on. I am not familiar with that but I am familiar with the capital account."

Mr. R. C. Sharp, Vice-President of the company, testified in said cause, transcript page 790, as follows:

"By Mr. Rogers:

Q. Are you able to testify to the acreage the Oklahoma Natural gas on their lease in its own name?

A. I cannot give it to you, it is some where between two hundred and two hundred and fifty thousand acres.

Q. Where is the main body of that acreage? Is it in the Osage and in proximity to Cushing and Tulsa?

A. I would say the majority of it is east of Oklahoma City.

Q. You have none in the south portion of the State?

A. We have gas purchase contracts on—I will say 25,000 acres.

Q. In the southern part of the State?

A. Yes.

Q. But you don't own the leases?

A. No but we get all of the gas produced on those leases.

Q. How much gas do you buy from other persons than that produced from your own lease?

A. About eighty per cent.

Q. How many wells do you own on your own leases?

A. I cannot give you that.

Q. Can you approximate it?

A. I cannot give you an approximation, no sir.

\* \* \* \* \*

I have examined also the testimony introduced in Cause No. 3322 in said Commission, entitled, "Oklahoma Natural Gas Co., petitioner, vs. Oklahoma Gas & Electric Co., et al., Respondents," same having been an application for readjustment of rates of natural gas, the testimony hereinafter referred to having been given under oath before the Commission on May 6, 1918, as shown by the records of the Commission. At said hearing, Mr. R. H. Bartlett at that time  
322 Vice-President of the Oklahoma Natural Gas Company, as he testified, testified on behalf of the company that the original

capital stock of the Oklahoma Natural Gas Company was four million dollars and he was asked and answered as follows:

Q. "Do you know what was the consideration of the issue of the first capital stock of the Oklahoma Natural?

A. Yes.

Q. What was it?

A. Properties, Gas Wells, Gas, Gas Leases.

Q. Situated where?

A. A great part of it was situated in the Hog Shooter Gas Pool.

Q. Who were the original owners of the property turned over to the Oklahoma Natural in exchange of this?

A. There was probably 15 or 20 or more operators in that district.

Q. Was the president of this company now, one of those?

A. Yes.

Q. How much was paid for that?

A. The full capital 4 million.

Q. Was the entire issue paid up at the transfer of properties of the Oklahoma Natural?

A. Yes.

Q. There never has been put into this company, so far as you know, any money in exchange of this stock originally?

A. No there was no actual money put in any stock when the company was organized.

Q. With reference to this 4 million was any of that issued in consideration of cash in the treasury of the company, the original issue of 4 million dollars now, am asking you if any of that stock, the first issue, was bought or issued in consideration of money, or was all issued in consideration of property?

A. It was all for property.

Q. Were you officer and did you take part in those negotiations?

A. No I had nothing to do with that originally.

Q. Who were those operators who made those conditions in consideration of this 4 million stock?

A. G. T. Braden, the late T. M. Barnsell of Pittsburgh, Pa., Harry Heasley and associates known as Voncan Oil Co. There were quite a number of other operators.

323 Q. Can you tell us what property was conveyed to this company in consideration of this four million?

A. Yes there was 10 thousand acres of leases.

Q. Where were those located?

A. Largely located in the Hog Shooter district. Then in a separate gas pool in Twp. 25 South 26 North 24 Range 14 I believe, There was 500 million ft. of gas open flow volume on these leases and I don't remember the number of wells exactly—possibly 30 or 40 gas wells.

Q. What territory were they supplying at that time?

A. That was a virgin field, no pipe lines there.

Q. Not supplying any municipalities?

A. I would not be sure of that, I think the Heasley Gas Co. had a line to Bartlesville, but am not just sure.

Q. How many gas wells did they have?

A. I just said from memory I think 30 or 40 gas wells.

Q. Over how much or how great a territory were they scattered?

A. I could not say exactly originally, but the field covered a distance of probably 12 miles North and South and 1 or 2 miles wide mostly in Washington and Nowata Counties.

The witness Sharp testified, (Record 536) as follows:

Q. "Now, you say, in 1917 when you increased the capital stock from four million to ten million you issued a million three hundred and fifty-six thousand dollars' worth of stock for cash and three million dollars for some other investment, what was that?

A. In 1917 we issued \$1,356,000.00 for cash, we issued \$2,000,000.00 for the Osage and Oklahoma stock, \$2,000,000.00 for the Caney River Gas Company stock, \$100,000.00 for the Enid Natural Gas Company's stock, \$250,000.00 for the People's Fuel & Supply Company's stock, \$300,000.00 for the Oklahoma Fuel Supply Company's stock.

Q. Were those subsidiary companies?

A. They were companies that we took over at that time.

Q. That is the Caney River?

A. Yes.

Q. And Enid?

A. Yes.

Q. And the Producers?

A. The Oklahoma Fuel Supply Company and the People's Fuel and Supply.

Q. Where your company already owned and controlled those other companies or by the same group of men?

A. All with the exception of the Oklahoma Fuel & Supply.

324 ply.

Q. Was that bought outright?

A. Yes.

Q. For three hundred thousand dollars?

A. Yes.

Q. That was all paid in stock, was it?

A. Yes.

Q. Was any money paid for the Osage and Oklahoma or any other subsidiary company?

A. No, sir.

Q. The total amount of cash paid into the company when you increased from four million to ten million was \$1,356,000.00?

A. Yes.

Q. That was derived from the sale of stock?

A. Yes.

Q. Was that sold to the present stockholders or not, or was it to entirely new stockholders?

A. Present stockholders at par.

Q. Then in 1917 when you took over the Osage and Oklahoma

and completed the issue for cash and for the purchase of other property you had consumed all of that ten million dollars, had you?

A. Yes sir.

Q. You testified that the present capital stock of the company is fifteen million with fourteen million three hundred thousand dollars issued?

A. Yes sir.

Q. When did you increase the stock to fifteen million?

A. 1919.

Q. What time of the year?

A. I believe in June, I don't remember exactly.

Q. You increased from ten to fifteen million?

A. Yes, sir.

Respecting this 1917 merger, the witness Ritts, Secretary-Treasurer of the Oklahoma Natural Gas Company, testified: (Record 759-760.)

325 By the Witness: "The record of Mussen & Gayle, they have introduced a voucher record which gives a copy of every voucher in the office, and those vouchers will show the appraisalment at the time of the consolidation. They can take any one of those particular voucher records and go to the office and refer to the record there.

Mr. Hills:

Q. Let's see if I understand that. At the time the merger was made, in other words, the company took over certain other properties.

A. Yes sir.

Q. And paid for that property by issuing stock?

A. Yes, sir.

Q. Prior to the time they issued this stock and took the properties over there was an appraisalment made of the property in order to ascertain its value?

A. There was not an actual appraisalment made, there was two or three specialists, as Mr. Sharp explained the other day, appointed a committee to make an appraisalment and arrive at a fair price for it, prior to that. The properties were merged on the figures of their determination. As to going into the detailed inventory of the properties. I don't believe that was done.

Q. Do you remember the name of those gentlemen?

A. No sir, I cannot tell you off-hand. The record will show that.

Q. Do you know whether or not those gentlemen made a written report on these properties?

A. Yes sir they did.

Q. Is that report filed in your office here?

A. I have a copy of that report or at least I have some copies of it in the minute book.

The witness Ritts further testified: (Record 815-817).

Mr. Ritts: "This is a copy of the report to Mr. E. P. Whitcomb and Geo. W. Coffey, at Pittsburgh, Pennsylvania.

"Gentlemen we beg to submit herewith our report of the value of the three Oklahoma Gas Companies basing our result on the statements furnished by Messrs. Bartlett and Sons, by placing a valuation on the land held by the committee who was chosen for that purpose and we believe a fair valuation for trading purposes would be as follows:

Oklahoma Natural, Four Million Dollars,  
Osage and Oklahoma, Two Million Dollars,  
Caney River, Two million dollars, with the assets and buildings and these to be pro rated by the re-organized company.

Yours very truly,  
(Signed)

H. P. REESER.  
JOHN E. PEW.

326 Mr. Keenan:

Q. That is all of the record you have with reference to this stock merger there in your office?

A. Oh, no, there is more detailed information in respect to the merger, and vouchers from the consolidation.

Q. What information have you, what is it, that is what we want to know?

A. Well as I say the entries are in the books, and these entries are supported by vouchers explaining the entries.

Q. Do you have the receipts?

A. There is a report filed.

Q. The appraisal report?

A. The report is these two, there were not any engineers outside of those two who made the appraisalment.

Q. And they based their report on the information that they had?

Mr. Sharp: Excuse me, I was one of the Committee to furnish information for the Oklahoma Natural and I was not a stockholder in the Osage and Oklahoma, and I was there and tried to put the Oklahoma Natural in, and the Osage and Oklahoma at a fair basis, and they were furnished the data of investment and reports of all physical properties of the Osage and Oklahoma.

Q. Have you got that?

Mr. Sharp: Mr. Bartlett was the Secretary of the Company then

Q. Have you got that?

Mr. Ritts: I have not seen it but if it is on file I can get it.

Mr. Keenan: It is a question of whether Mr. Bartlett knows this or Mr. Ritts, if Mr. Roberts is the only one that has that information we want to get it for we think that it is relevant.

Mr. Sharp: He had it then.

Mr. Keenan: Will you ascertain now and between the next hearing if you have that?

Mr. Ritts: If you will let me have a statement of what you want?

Mr. Keenan: I want the detailed information upon which you made this report?

Commissioner Echols: The information you furnished to them you would not have that would you?

327 Mr. Sharp: They worked for a month or six weeks, they were both busy men, we got the best talent we could, and they were not interested and they worked and had other men work with them, and when the whole thing was over they returned all of the stuff.

Mr. Ritts: I will be glad to look it up and see if we have it on file and if we don't have it on file, I will write then to those people."

The further proceedings in the record do not show that these detailed statements were furnished in the hearing.

The following quotation is taken from Order No. 1255 of the Corporation Commission of Oklahoma issued in Cause No. 2693, being an application of Osage and Oklahoma Company and Galbreath Gas Company to change schedule of rates for natural gas in Tulsa, Oklahoma, the order having been dated March 31, 1917.

*"Conclusion as to Present Fair Value."*

"Attorney for the Osage & Oklahoma Company in his brief adds together the original cost, \$522,639.68, and the replacement cost, \$840,822.16. This gives \$1,363,481.84. He then takes one-half of this sum, or \$681,730.00. It is shown from the record that Tulsa consumes more than 99 per cent of the gas sold by the company. He therefore apportions to Tulsa 99 per cent of \$681,730, or \$674,913. He estimates that the property has depreciated 10 per cent a year for five years and by a deduction of this depreciation, he fixes the present value of the physical property at \$398,530.00. This of course is only an estimate."

It appears from the testimony that the cash paid into the company from sales of the capital stock of the company after the original four hundred thousand dollars issue testified to by Mr. Bartlett as above quoted, appears from the following question and answer during the examination of Mr. Sharp.

"Q. As I understand, the only cash sales you ever got was the million three hundred and fifty six thousand dollars when you merged the Osage and Oklahoma property and the three million dollar cash sales of stock to the stockholders in 1919. \$1,800,000.00 of which went to pay off notes for pipe lines, is that right?

A. That does not include the cash originally put in in the Oklahoma Natural."

after which Mr. Sharp testified that two million dollars had been put in in cash at the time of the original organization of the Oklahoma Natural Gas Company. Mr. Sharp was not with the company at that time as his testimony shows. Mr. Bartlett's testimony on this point is above quoted. Subsequently and on page 557, Mr. Sharp was asked and answered as follows:

328 Q. "You have issued \$14,300,000.00 worth of stock and your testimony accounts for only \$13,000,000.00; what became of the other million three hundred thousand. How came it to be issued and what was it issued for?

A. That was given as a stock dividend at that time, to get in the money. The banks would not allow us to have the money. We wanted to get money to build the line and the bank would not furnish money and we got the stockholders to take the stock by giving them ten per cent bonus on the stock as no stock could be sold for less than par.

Q. Then you got a bonus of a million three hundred thousand dollars worth of stock upon the three million dollar payment?

A. Ten per cent on the thirteen million.

Q. Well, you didn't pay in thirteen million, you only paid in three million in cash?

A. Yes.

Q. But you got a bonus on thirteen million?

A. Yes sir; part of that was a part of the proration of the property and as an inducement to get the money in as we would have had to pay a larger bonus than that at the bank."

R. C. Sharp testified (Record page 532) as follows:

Q. "The same interests that controlled the Osage and Oklahoma now controls the Oklahoma Natural?

A. Yes.

Q. Then, in effect, they issued stock to themselves and transferred the title of the Osage and Oklahoma property and just disorganized the Osage and Oklahoma and dissolved, rather, and organized it as the Oklahoma Natural?

A. Yes, sir."

Mr. Sharp, Vice President of the Oklahoma Natural Gas Co. appearing as a witness on its behalf, testified that about two million cubic feet a day was produced by the field reached by the Morrison line in which the company had an investment of \$826,000. An examination of the appraisal exhibits of the Oklahoma Natural Gas Co. introduced in evidence shows that the Morrison line is included in its property inventory.

329 In testifying on the question as to whether additions to plants of the Oklahoma Natural Gas Company made to reach new and therefore unattached gas fields should be added to the capital investment account or to the expense account, Mr. H. E.

Musson introduced as a witness by the Oklahoma Natural Gas Company in said hearing, testified:

Q. "Of course if that is treated as an expense the company would not be allowed a return on the cost of that extension.

A. Neither return nor depreciation."

Dr. Samuel S. Wyer who qualified in testimony, record page 251, that he was a consulting engineer educated at the Ohio State University taking a degree in mechanical engineering, having given practically all of his time for over ten years to natural gas problems, acting and consulting engineer for both gas companies and the public, during the period of the war chief of natural gas conservation for the United States Fuel Administration, Consulting Engineer on Natural Gas Conservation for the United States Bureau of Mines, testified as follows:

Q. Mr. Wyer, what is the average loss in the transportation of gas in transportation lines?

A. Based on all the data that I have been able to gather together both from private and governmental sources, when that question was put to me on the 15th of January it was my judgment that the loss was somewhere between thirty and thirty five per cent between the wells in your field and the ultimate consumer's meter. Practically three-fourths of the gas companies in the United States jumped on me by stating that that was entirely too large and entirely out of reason and one individual, in fact, insisted that he had a bottle tight plant and in his distributing plant, which happened to be for a part of the town of Pittsburg, he was wasting over a million dollars' worth of gas a year. I have come to the very definite conclusion that the figure I gave in Washington, notwithstanding the fact that the industry as a whole opposed it very bitterly, was low, rather than high. That is, that the loss is probably at least all of the evidence indicates that in excess of thirty-five per cent between the wells and the field and the ultimate consumer's meter.

Q. That is the average?

A. The average.

Q. Do you mean that where the Oklahoma Natural Gas Co. is transporting gas to several towns, one of which is one hundred and fifty miles from the source of production, that there is the  
330 other about thirty miles from the source of production, that the loss is thirty five per cent in both instances?

A. No, what I have given you is an average figure for the entire United States, and of course an average figure, that would be an average for the various companies. I have been informed and I have not verified these figures that the loss on the Oklahoma system between the well in the field and ultimate consumer's meter, is in round numbers, twenty-six per cent, of which in round numbers, ten per cent is allocated to the main lines and sixteen per cent to the distributing plants, but the different distributing plants vary

very largely. Now, the loss in the local Tulsa plant is very much larger than it ought to be. I am unable to give you the exact figures for the reason that the figures that the company turned over to me include a short stretch of main line out in the Osage field; that is, the gas is measured into that transmission line and the loss in that transmission line included in their distributing plant loss, but just merely by way of comparison, taking figure, the loss in miles of three inch pipe per annum, is 4,373 M cu. ft. by way of comparison good manufactured gas practice would require that a distributing plant should be kept down to 100 M per mile of 3 inch. Therefore, the loss on this local distributing plant, which, however, includes the 8 miles of this line coming in, is 43 times larger than good manufactured gas practice would indicate. This loss is twenty-two times larger than the average of over a hundred towns in Ohio supplied by the Ohio Fuel Supply Co. That is a factor that you must cope with in your future rate situation. That loss must be curtailed. To give you some idea, since we are on the loss situation, I have made a calculation here and this is the only basis because in the last analysis you are wasting something which in the very near future the public is going to pay a very much higher price for a substitution. On the basis of what it will cost the public to replace the natural gas now wasted in the Tulsa plant, the annual loss amounts to 2,500,000 dollars each year. An interesting comparison there is that basing the statement on general averages, the domestic consumers in Tulsa, by virtue of their inefficient appliances are wasting \$3,750,000.00 of gas. In other words, in the City of Tulsa, you are wasting \$6,000,000.00 worth of gas annually,—enough to build ten Cosden Buildings in the City of Tulsa each year.

Mr. Richardson: That is on the basis or basing the value of gas with relation to other fuel?

A. Putting the value on the natural gas which the consumer must pay and pay in the very near future when natural gas is no longer available, for other fuel, and he must use a substitute. When you have destroyed it, and when you waste it you destroy it. This represents a fair money value of that loss sustained, which in brief, means that for this community, for each year, you are wasting enough gas to pay for ten buildings like the Cosden people have in this city."

The foregoing testimony was given in a hearing at Tulsa on November 8, 1920. Dr. Wyer also testified (Record 397):

331 Q. Can the most of this waste in the distribution plants be eliminated by proper construction and maintenance of that distributing plant?

A. Yes sir. For instance, the Ohio Fuel Supply Company, operating in Ohio, after a two year fight with them I got them to put in meters. They had always taken the position that the meters were absolutely unnecessary and that they had a bottle tight system. Meters were put in and every bit of gas measured into that

system. The loss on that system and supplying in round numbers one hundred towns in Ohio, the loss between the wells in the field and the ultimate consumer's meter the first year of the so-called bottle tight system, was forth-three per cent. Within four years that company has cut that loss down by proper maintenance, down to thirteen per cent. In other words, the Ohio Fuel Supply Company, by virtue of the first meter which was allocated the loss in the particular line where the loss was most serious, is to-day, able to furnish and sell thirty per cent more gas to the public than it could have sold had it not gone in and faced the conservation program four years ago.

Dr. Wyer testified (Record 405-409):

Q. I think that this is a very valuable bit of information and it helps out. Now Mr. Wyer what about the three million dollars' worth of gas lost by the company?

A. It was two and one-half.

Q. Well how can that be conserved?

A. By immediately requiring that steps shall be taken to curtail the leakage on the local distributing plant and the statement that I will make in answer to the question applies not only to Tulsa but applies to every gas company in this state. I think that this Commission ought to immediately carry out that part of the national committee's recommendation referring to gas measurement and require every gas distributing plant operating in this state to first measure all of the gas in that distributing plant; secondly, to make public the result of that measurement so that we can get a comparative basis. In other words, the Commission could then compile a table and give the exact amount of gas lost in every natural gas distributing plant in the State of Oklahoma. The difficulty is that a number of the old-time gas executives have still got the old mistaken idea that gas plants are bottle tight, that is their favorite expression. There is no such thing as a bottle tight plant and constant diligence must be exercised in order to first locate the leaks, and secondly to take care of the repairs and maintenance necessary to correct the leaks. It is my judgment that the Commission ought to immediately act, not only so far as the local Tulsa situation is concerned, but so far as every other town supplied by Oklahoma Natural is concerned and in fact every town in the State. First, require the measurement and second publicity of the results obtained. To give you a yard stick, the average manufactured gas plant in the United States maintains a plant where the loss per mile of three inch line per annum is not in excess of 100,000 feet of gas. That is, they take the various lengths of various size lines in the distribution plant and convert them into equivalent three inch lines in size other than three inch; that is, a mile of six inch would be equivalent to two miles of three inch and a mile of twelve inch would be equivalent to four miles of three inch, placing the distributing plants on that basis you would then get a comparative yard stick with which to measure comparative efficiencies in the

different plants. Bear in mind that good practice on manufactured gas would be 100 M of gas per mile of three inch.

332 The Ohio Fuel Supply Company in Ohio has and is operating a large number of—over a hundred—towns under 200 M and has cut its leakage from 43 per cent down to 13 per cent in four years by vigorous maintenance. The leakage in the Tulsa plant, including, however, in order to be fair, the loss on this short line into the Osage field, is 4,373; in other words, the leakage in the Tulsa plant is 43 times larger than good manufactured gas practice would indicate ought to prevail. It is 22 times larger than the average of a hundred towns in Ohio. Now, there is only one thing you can do and in the cost analysis that I would prepare in answer to your interrogatory I will set up a distinct statement and set up a distinct financial analysis which will provide a certain, definite amount of money that ought to be spent in the next year by the local company on this local distributing plant in order to curtail this loss.

Q. The loss of  $2\frac{1}{2}$  millions is taxed to the consumer is it not?

A. The consumer always pays the freight.

Q. And as long as the consumer is compelled to pay the loss there is little incentive for a reduction on the loss, is there not? Little incentive for the company to reduce the loss?

A. There isn't anybody else to pay for it. The company, however, in order to be perfectly fair with you, the company ought not to be allowed to continue to operate this plant with the present excessive leakage.

Q. Now, you are getting down to the bottom of this proposition. What is the reason they are having 43 times the loss on this short Osage line that ought to be there?

A. It is not on the Osage line only; you have misunderstood me. The old short Osage line loss is included with the Tulsa distributing plant. They are putting meters in at the gates of Tulsa so as to separate the loss in the Osage line from the distributing plant in Tulsa. That will, of course, lower this total loss in the Tulsa distributing plant but I know enough about the situation to be sure of my position that the loss is excessive and that that excessive loss ought not to be continued.

Q. Do you mean to say the loss in the Tulsa plant, including the short line, the Osage short line, is 43 times more than what it should be?

A. Yes sir.

Q. Is that due to bad joints in the mains and laterals.

A. It may be due to a great many things.

Q. Well let us have what is really the cause of the loss.

A. First, slow meters would, of course, appear there as a leakage loss. Secondly, you undoubtedly have a certain amount of electrolysis in this town; is, you are operating a single trolley electric railway with grounded return. Those ground currents leak off of the rails and get on the underground gas pipes and travel along the pipe and where they leave the pipes to go back into the soil they will always corrode the gas pipe. That will account for part. Then you

undoubtedly have a large amount of pipe where the joints are leaking, in fact, it would be my judgment, based not on local investigation but on the general experience I have had in a large number of other towns—and we have gone over this thing in several hundred towns—

it will probably be necessary—and this is the seriousness of it  
333 with our fine paved streets—to open the bell holes and cut into these paved streets and get into these pipes and put on collar leak proof joints before you can get the leakage down where it ought to properly be. That is the practical aspect you will have to face. You may get to a point where the cost of cutting through the fine pavements you have and restrictions the city would set up, naturally, with *regret* to cutting through these pavements, will be so high as not to make it worth while to get the leakage down to as low a point as it could be gott-n down under any other circumstances. I can't tell you how low they can get it but they can get it lower than they now have it.

Q. Are these leaking joints discoverable on the surface in any way?

A. They are very hard to discover and the Bureau of Mines has done some work and I started some work myself when I was with the Fuel Administration to devise a way of putting in an offensive vapor in the natural gas at the gates of the town in order to give it an offensive odor so that leakage might be made discernable easily. In the first place, with manufactured gas the difference is two fold. With manufactured gas that is offensive. You can't have a leak anywhere but what your nose will tell you and you have an offensive odor—you can have a large natural gas leak in this room and unless you were up close to it you wouldn't notice it. Secondly, natural gas being naturally a dry gas has a very marked avidity for moisture and tends to dry out the soil immediately adjacent to a small gas leak so as to make it easier to get out and up through the surface, whereas, manufactured gas, because of its vapor *intent* which, of course, is a troublesome thing to handle at the burner, but if you have a small pin hole in a pipe the vapor content in the manufactured gas tends to close up that pin hole becuae just as soon as the gas goes through the water drawn action will percipitate the connection and it will close up and on top of what you have the condition that natural gas is always distributed at higher pressure than manufactured gas and at higher pressures than are necessary.

334 Dalious Exhibit #20 referred to hereinbefore in Schedule No. 1, sheet 3 thereof, headed "Production Expense" shows the following items:

Obtaining Leases and Lease Dept. Expenses .....	\$20,793.75
Land Rentals .....	65,787.11
Royalties, Well .....	88,367.77
Cancelled and Surrendered Leaseholds .....	96,325.43
Drilling Wells .....	525,654.34
Operating .....	346,685.95
Repairs to Wells .....	2,283.18
Repairs to Lines .....	8,577.83
Repairs to Buildings .....	1,519.81
Abandoning Wells and Lines .....	65,548.02
Damages .....	1,504.23
Tools & Supplies .....	13,813.51
Chart Department .....	10,572.12
<hr/>	
Total analysis books .....	\$1,247,433.05
Other Expenses (See Schedule No. 4):	
Taxes .....	149,970.29
Profit & Loss Suspense .....	39,939.24
Plant Retirement .....	6,500.39
Machine Shop Expense .....	4,699.34
<hr/>	
Total .....	\$1,446,542.31

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The first page of Daliou Exhibit #20, is as follows:

Income .....					\$5,803,040.42
Sale of Gas .....					
Miscellaneous .....					
Less:					
Operating expenses .....					\$3,652,324.44
General .....					267,008.02
Production .....					1,247,433.05
Transmission .....					373,737.48
Distribution .....					203,465.98
Gas Purchased .....					1,560,679.91
Add:					
Other expenses .....					520,562.13
Taxes—General .....					14,308.42
" 1919 Property .....					130,849.32
" 1920 .....					230,854.52
" 1920 Federal Income .....					121,000.00
Plant Retirement .....					11,716.71
Uncollectable Gas Accounts .....					11,833.16
Machine Shop Expense .....					6,107.24
Profit & Loss Suspense .....					75,452.48
Interest on Funded Debt .....					76,887.92
Interest on Notes Payable .....					10,958.19
Net Operating Income—Gas .....					4,342,292.40
Less Dividends—Gas .....					1,460,748.02
Net profit .....					1,143,806.14
Before Depreciation & Depletion .....					\$316,941.88

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OKLA. NAT. GAS CO. VS. CAMPBELL RUSSELL ET AL.

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And further affiant sayeth not.

W. E. GRIMES,

*Auditor for the Corporation Commission.*

Subscribed and sworn to before me this 25th day of January, 1922.

[SEAL.]

J. S. GRAM,

*Notary Public.*

My Commission expires Jan. 1, 1923.

Endorsed: Filed in District Court on January 25, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

337 In the United States District Court for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and S. P. Free-ling, Attorney General of Oklahoma, and The City of Tulsa, a Municipal Corporation, and Frank E. Duncan, Its Attorney, and The City of Sapulpa, a Municipal Corporation, and Le Roy J. Burt, Its Attorney, and The City of Claremore, a Municipal Corporation, and F. W. Holtzendorff, Its City Attorney.

*Affidavit.*

W. E. Grimes, of lawful age, having been first duly sworn, states that he is the auditor for the Corporation Commission of the State of Oklahoma, and that as such, he is familiar with the records and files of the Corporation Commission relating to the various rate applications filed before said Commission by the Oklahoma Natural Gas Company as shown by those records during the past several years including the years 1917 and 1918; that he has read Order No. 1255 in Cause No. 2693, made and entered on the 31st day of March, 1917, in re application of Osage and Oklahoma Company and Galbreath Gas Company to change schedule of rates for natural gas in Tulsa, Oklahoma, and which order is reported in the 1917 Report of the Corporation Commission at page 438; that the valuation arrived at as a result of said hearing and said order as a basis for the fixing of a rate and a reasonable return for said company, was \$693,959.07 which included \$100,000 allowance for the construction and installation of a belt line for the purpose of bettering the service rendered by said company in the City of Tulsa; that the Osage and Oklahoma Company and Galbreath Gas Company is, as shown by the records of the Corporation Commission of the State of Oklahoma, one of the companies which, in the month of October

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1917, was merged and consolidated with the Oklahoma Natural Gas Company, a public utility engaged in the distribution and sale of natural gas for consumption within the State of Oklahoma; that he is familiar with the transcript of the evidence taken at a hearing commencing in the month of May, 1918, soon after the merging and consolidation of said companies; that during said hearing the City of Claremore, by its representatives the firm of Harris, Howard & Nowlin, Attorneys, prepared certain interrogatories and filed same with the record in that cause, in which certain information was requested of and from the Oklahoma Natural Gas Company with respect to the issuance of its stock and the sale thereof. The record in said cause which is Cause No. 3322, including the interrogatories and the answers thereto on file with the Corporation Commission, is as follows, to-wit:

"6. Q. What funds has the Oklahoma Natural Gas Company derived from the sale of stock?

A. Not any of the original stock of the Oklahoma Natural Gas Company was sold for cash. The entire capital of \$4,000,000.00 was issued for property.

"7. Q. What funds has the Oklahoma Natural Gas Company derived from the sale and disposition of securities?

A. Both bond issues, all bonds have been sold for cash at one hundred cents on the dollar, with very little expense, and very small percentage of broker's commissions paid. They were not underwritten regularly through any brokerage house, but sold direct by the company.

"8. Q. What disposition was made of the funds secured from the disposition of the stock and securities set forth in the last two above questions?

A. The property secured by the stock was assigned and transferred to the company and became a part of its assets. The money derived from the sale of bonds was used in building pipe lines and other construction work and improvements for the company."

That the testimony of Mr. R. H. Bartlett, Vice-President and General Manager of the Oklahoma Natural Gas Company at that time bearing upon the question of the amount of stock issued at the time of the consolidation and merger and the amount which was  
339 paid for the property represented by the Osage and Oklahoma Company, and as found in the transcript of the testimony taken in that cause, is as follows:

"Q. Mr. Bartlett, were you one of the original incorporators of the Oklahoma Natural?

A. Not one of the original incorporators, but I was Secretary and Treasurer when the company was originally organized.

Q. Were you a stockholder?

A. Yes very soon after that, a small stockholder.

Q. Do you know what was the consideration of the issues of the first capital stock of the Oklahoma Natural?

A. Yes.

Q. What was it?

A. Properties, Gas Wells, Gas, Gas leases.

Q. Situated where?

A. A great part of it was situated in the Hog Shooter Gas Pool.

Q. Who were the original owners of the property turned over to the Oklahoma Natural in exchange of this?

A. There was probably 15 or 20 or more operators in that district.

Q. Was the president of this company now, one of those?

A. Yes.

Q. How much was paid for that?

A. The full capital 4 million.

Q. Was the entire issue paid up at the transfer of properties of the Oklahoma Natural?

A. Yes.

Q. There never has been put into this company, so far as you know, any money in exchange of this stock originally?

A. No there was no actual money put in any stock when the company was organized.

Q. With reference to this 4 million was any of that issued in consideration of cash in the treasury of the company. The original issue of 4 million dollars now, am asking you if any of that stock, the first issue, was bought or issued in consideration of money or was all issued in consideration of property?

A. It was all for property.

Q. Were you officer and did you take part in those negotiations?

A. No I had nothing to do with that originally.

340 Q. Who were those operators who made these conditions in consideration of this 4 million stock?

A. G. T. Braden, the late T. M. Barnsell of Pittsburgh, Pa., Harry Heasley and associates known as Vonsan Oil Co. There were quite a number of other operators.

Q. Can you tell us what property was conveyed to this company in consideration of this four million?

A. Yes there was 10 thousand acres of leases.

Q. Where were those located?

A. Largely located in the Hog Shooter District. Then in a separate gas pool in Twp. 25 South 26 North 24 Range 14 I believe. There was 500 million ft. of gas open flow volume on these leases and I don't remember the number of wells exactly—possibly 30 or 40 gas wells.

Q. What territory were they supplying at that time?

A. That was a virgin field, no pipe lines there.

Q. Not supplying any municipalities?

A. I would not be sure of that, I think the Heasley Gas Co. had a line to Bartlesville, but am not just sure.

Q. How many gas wells did they have?

A. I just said from memory I think 30 or 40 gas wells.

Q. Over how much or how great a territory were they scattered?

A. I could not say exactly originally, but the field covered a distance of probably 12 miles north and south and 1 or 2 miles wide mostly in Washington and Nowata Counties.

Q. Were those companies paying when they were purchased in this merger—paying any dividends?

A. Yes I think they were paying dividends.

Q. Do you know what dividends?

A. The Caney River Gas Co. was paying 10 per cent—the Osage and Oklahoma 8%—The Oklahoma Fuel Supply Co. was either 6 or 8 per cent. I think they had paid 8 and dropped back to 6. The Enid Natural Gas Co. had not been paying dividends, that was the newest company in the merger.

Q. What was the stock issued in these four companies which you took over issued at that time?

A. The Caney River Gas Co. the outstanding capital was 1 million, the Osage and Oklahoma 1 million 500 thousand, The Oklahoma Fuel Supply Co. was 250 thousand and the Peoples Fuel Supply Co. was 100 thousand and the Enid Natural Gas Co. was 200 thousand.

Q. So as far as you know has there been any money put into this company from any source, other than the profits arising from the sale of gas and oil since the first original transaction in which the four million dollars was issued in any of the companies?

341 A. Those other companies had more or less cash put in when they started and I am not just familiar with the original organization of all of those companies. The Osage and Oklahoma Co. I am familiar with. That company when they started bought acreage in the Osage Nation from Goffrey & Galley in Pittsburgh at the purchase price of 1 million and a quarter—22 thousand in mortgages and 450 thousand in cash. The stock was sold to make payment in cash. I think the stock sold at \$36 a share. The Caney River Gas Co. had passed through their notes before this merger. Mr. Braden had bought that company from Heasley and his associates in 1910 and at that time he paid 1 million for the property—600 thousand in cash and assumed 400 thousand in bonds. Just how the Caney River was originally I don't know."

Affiant further states that Order No. 1255 in Cause No. 2693 which was the application of the Osage and Oklahoma Company and Galbreath Gas Co. to change schedule of rates for natural gas in Tulsa, Oklahoma, together with the brief filed in that cause by the attorney representing the gas company, only insisted upon a depreciative value of the physical property of that company at the time, of \$398,530; that the accountants for the Commission having taken into consideration advance in price of material and the cost of labor and after making allowance for depreciation, fixed the present fair value of the property of the City of Tulsa at \$386,897.73, and for the Osage Pipe Line at \$137,061, total \$523,959.07.

The value finally fixed as a basis for the establishment of a rate in that case by the Commission, including \$100,000 for a belt line,

\$50,000 for extension of pipe line, and \$20,000 for developing leases, was \$693,959.07. This order was made on the 31st day of March, 1917 and on or about the 1st day of October, 1917 the consolidation of this company with the Oklahoma Natural was consummated, wherein a value was placed upon this same property of \$2,000,000.00 or approximately \$1,300,000.00 more than the value as found and ascertained in the Commission's order of March 31, 1917.

And further Affiant sayeth not.

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W. E. GRIMES,

*Auditor of the Corporation Commission.*

Subscribed and sworn to before me this 25 day of January, 1922.  
[SEAL.]

J. S. GRAM,

*Notary Public.*

My Commission expires 1-1-1923.

[Endorsed:] Filed in District Court January 25, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

343 In the United States District Court, for the Western District of Oklahoma.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit.*

STATE OF OKLAHOMA,  
Oklahoma County, ss:

C. S. Thompson being first duly sworn, deposes and says that he is a Consulting Engineer with office at Shawnee, Pottawatomie County, Oklahoma, and that he is conversant with the general rules and practice of a consulting engineer in the pursuit of rate inquiry; that he was for four years in the employ of the Stanley Electric Manufacturing Company of Pittsfield, Mass., as an erector, and for nine years was engaged in the engineering and construction work in Wisconsin and Northern Michigan, and that for nearly two years he had charge of the construction and operation of the public utilities of the Central Illinois Public Service Company. In his capacity as Assistant Chief Engineer and that of Chief Engineer for William & S. Mainland, had charge of the construction and operation of their properties, they operating the Marquette, Michigan Gas Company, Hannibal, Mo. Street Railway Company, Idaho, Oregon Light & Power Company, Boise, Idaho, Stevens Point Lighting Company and Stevens Point Power Company, Stevens Point, Wisconsin, Hough-

344 ton County Gas Company, Houghton, Michigan, The Fargo Gas & Electric Company, Fargo, N. Dak., and the Winston-Salem Gas Company, Winston-Salem, N. C., and the Shawnee Gas & Electric Company at Shawnee, Oklahoma; that he is conversant with the original contract between the Oklahoma Natural Gas Company and the Shawnee Gas & Electric Company and that he is able to intelligently examine the Annual Reports of the Oklahoma Natural Gas Company and their quarterly construction reports as made under oath to the Corporation Commission of Oklahoma pursuant to legal requirements.

It appears that they have been making a practice of carrying as a part of their regular operating expense, certain charges or accounts that would appear to be placed there erroneously and which accounts cover "Changes in Construction," "Reports to Wells or Leases," "Reports to Lines," "Reports to Buildings," "Drilling Wells," "Surrendered Leases," "Abandoned Wells and Lines," and for which items there appear charges from June 30, 1909, to June 30, 1920, aggregating \$1,844,352.93, and which the deponent, it is declared, should be charged to the depreciation reserve fund or should be considered as amortizing a part of the capital account; that there also appear charges for interest paid on borrowed capital which is not justly chargeable to expense for the reason that the company is allowed a working capital that is intended to cover the funds necessary and used in the conduct of the business, and these charges aggregate \$857,558.08; that the company has without any detailed explanation arbitrarily written off in their Profit & Loss account large sums of money which are charged to operation but which properly should be amortized over a reasonable period of years and which aggregate \$836,857.37.

That the company has from time to time paid dividends on their stock outstanding which they have put into their ordinary operating expenses and which should not be included therein but should be carried as a separate account as it goes to make up a part of 345 the total percentage which they are allowed to earn and upon their physical value, and should be shown with the net income; that the company has declared stock dividends or given a bonus to stockholders that is not, allowable and is improper, in the sum of \$1,300,000.00.

That on October 1, 1917, the Oklahoma Natural Gas Company affected a merger of the Caney River Gas Company, the Enid Natural Gas Company, Peoples Fuel & Supply Company, Oklahoma Fuel & Supply Company, Osage & Oklahoma Company and Galbreath Gas Company for which they issued new stock in the sum of \$4,642,000.00. A study of their form or reports show that they were not from a physical standpoint of this value but that this value was arbitrarily set by a committee of eastern natural gas representatives; that through this merger and by other means the Oklahoma Natural Gas Company between the time of filing its Annual Report June 30, 1917, and its Annual Report June 30, 1918, increased its book value of used and useful physical property \$6,998,864.12 which would appear to be in excess of the combined show-

ing of the merger property in the sum of \$2,355,864.12. That further, in their report of June 30, 1919, the Oklahoma Natural Gas Company again improperly raised the physical value of its property without any showing as to the facts thereto, the sum of \$5,985,984.44, and in 1920 still further raised their physical value; on purported inventories of their engineers and auditors the values given were based on the highest market that had been known in this decade and these values should be considered temporary values only which would be changed with all changes in the market price of materials and labor. That for the purpose of said valuation their engineers and auditors should have taken a period of years which would have covered sufficient time to offset the extremely high market of 1918-1919 and 1919-1920, and for this period a term of ten years would seem sufficient. Their valuation of 1920 was in the sum of \$20,466,930.38 which represents an increase over the 1917 valuation and the 1917 merger payment combined of \$8,665,026.38. This sum is in excess of the now physical value which value is calculated from their sworn reports and returns to the Corporation Commission in the sum of \$7,087,376.48; that given a fair and equitable value amounting to \$10,946,555.90 on their physical properties including transmission, production and distribution systems their net income for 1920 would show 23% plus of their total value and that the purely production properties of said company should have been excluded from the value aforesaid; that from the Oklahoma Natural Gas Company's sworn reports for the period from June 30, 1909 to June 30, 1920, the average net return on the fair physical value of the company's property, production, transmission and distribution included, was 20% plus.

And further Affiant sayeth not.

C. S. THOMPSON.

Subscribed and sworn to before me this 26 day of January, 1922.

[SEAL.]

J. S. GRAM,

*Notary Public.*

My commission expires 1-1-1923.

Endorsed: Filed in District Court on February 9, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

347 STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

*Affidavit.*

P. E. Glenn, of lawful age, first having been duly sworn, states that he received the original and copies of the within and foregoing affidavit of C. S. Thompson, Consulting Engineer of Shawnee, Oklahoma, on the 8th day of February, 1922, and that he served a true and correct copy of same on A. D. Richardson, Attorney for complainant Oklahoma Natural Gas Company at 4:30 o'clock P. M. February 8, 1922.

P. E. GLENN.

DO NOT WRITE IN THIS SPACE

# ANNUAL RETURN

Of the ~~Oklahoma Natural Gas Co.~~  
to the State Auditor of Oklahoma, showing the amount, kind, location and value of all property belonging  
to, controlled by, or in process of construction for said person, firm, company or corporation in the State  
of Oklahoma, on the first day of February, A. D. 192....., as required by the State Board of Equalization,  
and in accordance with Laws of Oklahoma.

NOTE:—Footings of columns (Totals 1 and 2) must balance. Show a summary of School Districts  
following each County.

## CERTIFICATE OF ASSESSMENT

I hereby certify the  
following is the assessed  
valuation of the prop-  
erty as herein listed and  
as fixed by the State  
Board of Equalization  
of Oklahoma.

Witness my hand and

seal

State Auditor.

State of Oklahoma.....County....., 192....

PIECES OR QUANTITY	DESCRIPTION	PRICE EACH	(1) TOTAL	SCHOOL DIST.	(2) TOTAL
SUMMARY OF ALL COUNTIES.					
	Caddo				15,397.
	Canadian				73,189.
					88,586.

SUMMARY OF ALL COUNTIES.

Caddo	15,397.
Canadian	73,169.
Cleveland	37,620.
Cotton	109,380.
Creek	1,272,638.
Garfield	61,703.
Grady	617,118.
Grant	116,921.
Kay	285,916.
Lincoln	626,068.
Logan	46,702.
McClain	43,716.
Muskogee	483,964.
Noble	45,036.
Oklahoma	627,594.
Okmulgee	398,411.
Pawnee	71,774.
Payne	292,306.
Pottawatomie	43,094.
Rogers	107,237.
Stephens	361,670.
Tulsa	1,854,111.
Wagoner	199,786.
Washington	13,202.
TOTAL	7,825,552.

Do Not Write Beyond This Space



Subscribed and sworn to before me this 9 day of February, 1922.

[Seal of E. D. Graham, Notary Public, Oklahoma County, Okla.]

E. D. GRAHAM,  
*Notary Public.*

My Commission expires 3/4/24.

Endorsed: Filed in District Court on February 9, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

348 STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

F. C. Carter State Auditor for the State of Oklahoma, do hereby certify that the withing, foregoing and attached sheet is a true and correct copy of the Annual Return made to the State Auditor of the State of Oklahoma by the Oklahoma Natural Gas Company, a corporation, and filed in the Auditor's office on the 27 day of Apr. 1921, which purports to show the value of the property of said corporation in the various counties through which its pipe lines extend, or in which such property may be found, for the year 1921.

[SEAL.]

F. C. CARTER,  
*State Auditor.*

(Here follows certified copy of annual return to State Auditor, marked page 349.)

350 Endorsed: Filed in District Court January 25, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

351 In the United States District Court for the Western District of Oklahoma.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

VS.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and S. P. Freeling, Attorney General of Oklahoma, and The City of Tulsa, a Municipal Corporation, and Frank E. Duncan, Its Attorney, and The City of Sapulpa, a Municipal Corporation, and Le Roy J. Burt, Its Attorney, and The City of Claremore, a Municipal Corporation, and F. W. Holtendorff, Its City Attorney, Respondents.

*Affidavit.*

STATE OF OKLAHOMA,

*Oklahoma County, ss:*

Charles L. Daugherty, of lawful age first having been duly sworn, states that he is at present an accountant for the Corporation Commission of the State of Oklahoma and that during the time of the making of the valuation of the Oklahoma Natural Gas Company's properties in the year 1918, he was one of the valuation squad working under the supervision of W. E. Durham, at that time Valuation Engineer for the Corporation Commission of the State of Oklahoma; that he assisted in listing, inventorying and appraising the production property of said Oklahoma Natural Gas Company including the oil and gas leases held at that time by that company; that in so appraising and valuing said leases held and owned by the Oklahoma Natural Gas Company at that time, the leases which were originally taken and held by said company were appraised and valued at the face value as recited by the terms thereof; that the leases which were taken over and assigned to the Oklahoma Natural Gas Company at the time of the merger and consolidation of the Osage and  
352 Oklahoma Company, the Caney River Gas Company, the Enid Natural Gas Company and the Peoples Fuel & Supply Company, were listed, inventoried and appraised at the value represented in the respective assignments from the assignee to said Oklahoma Natural Gas Company.

Further Affiant sayeth not.

C. L. DAUGHERTY.

Subscribed and sworn to before me this 25th day of January, 1922.  
[SEAL.]

J. S. GRAM,  
Notary Public.

My Commission expires 1-1-1923.

Endorsed: Filed in District Court January 25, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

353 In the United States District Court for the Western District of Oklahoma.

No. —.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit.*

STATE OF OKLAHOMA,  
Oklahoma County, ss:

J. W. Duvall being first duly sworn, says that he is the Gas Engineer of the Corporation Commission of the State of Oklahoma and that as such he is familiar with the findings and records of said Commission covering the operations of the complainant, Oklahoma Natural Gas Company, a public utility; that according to the reports of the plaintiff certified under oath to the defendant, said Corporation Commission, the amount of gas sold by the plaintiff from its transmission system for the year 1920, together with the estimated loss in transmission covering the same period of time, is as follows:

Cu. ft.

Gas sold during the year 1920.....	20,030,786,000
Loss during year 1920 estimated as 20% of input into pipe line.....	5,007,696,000
Input into pipe line during the year 1920.....	25,038,482,000

The miles of main in the Oklahoma Natural Gas Company's transmission system as of October 31, 1919, is 995 miles on a three inch equivalent basis. The Addition and Betterment Reports for the year 1920 show a slight decrease in mileage. However, the mileage as of October 31, 1919, will be used in following determination:

354 With an estimated loss of 5,007,696,000 cu. ft. for the year 1920, the loss per year per mile of 3" equivalent main would be approximately 5,000,000 cubic feet, which is an enormous loss for any kind of a transmission system.

It is my opinion that a reasonable loss for a transmission system would be 500,000 cubic feet per year per mile of 3" equivalent main, which loss is only one-tenth of the loss as estimated by the Oklahoma Natural Gas Company for the year 1920.

And further Affient sayeth not.

J. W. DUVALL.

Subscribed and sworn to before me this 7 day of February, 1922.

[Seal of E. D. Graham, Notary Public, Oklahoma County, Okla.]

E. D. GRAHAM,  
*Notary Public.*

My Commission expires 3/4/24.

Endorsed: Filed in District Court February 9, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

355 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.,  
Defendants.

*Affidavit.*

STATE OF OKLAHOMA,  
*County of Oklahoma, ss:*

W. E. Grimes being duly sworn says that he is the Auditor for the Corporation Commission of Oklahoma and that as such he has charge of and is familiar with the files and records of the said Commission covering the operations of the Complainant, Oklahoma Natural Gas Company, a public utility.

On or about the 16th day of February, 1922, a request was made over the telephone on the Oklahoma Natural Gas Company at its main office in Tulsa, Oklahoma, for a statement and analysis of its gas sales during the month of January, 1922; that the Defendant was informed by Mr. J. E. Dalious, the Auditor, of the Complainant, that the data was not then available but that it would be obtained, compiled and submitted as quickly as possible; that subsequently on or about the 20th day of February, 1922, a representative of the Defendants was sent to Tulsa for the data and returned with it so that it was first available to the Defendants on the 23d of February, 1922 and that since the receipt of the data Affiant has devoted all of the time which other pressing duties permitted, including a large part of the half holiday on Saturday afternoon, February 25, 1922, and about half of Sunday February 26, 1922, checking and digesting the information.

The data furnished by the Complainant in response to the Defendant's request, as aforesaid, shows that during the month of January, 1922, the receipts from the sales of gas amounted to \$631.  
356 679.25. The monthly statements of revenues and expenses of Complainant have not been submitted for the month of De-

cember, 1921, and January, 1922, consequently the latest month for which the operating expenses and taxes of Complainant are available is November, 1921. That month, however, should be representative and reflect the approximate expenses and taxes which accrue against Complainant during the month of January, 1922. The operating expenses and taxes for the month of November amounted to \$268,579.20. The total gas sold by Plaintiff during the month of January, 1922, was 2,099,403,000 cubic feet. Allowing for a loss of ten per cent in transportation and an additional ten per cent in the gas distributed by Complainant through its utilities, it would be necessary for Complainant to purchase or produce 2,417,717,000 cubic feet. This at 10 cents per thousand cubic feet, the prevailing market price for gas at the well, would amount to \$241,771.70. This added to the operating expenses and taxes makes a total of \$510,350.90, which deducted from the gas sales in January, 1922, leaves a net profit of \$121,328.35. The amount derived from the sale of gas as aforesaid is computed at the rates authorized by Defendants.

The gas sales during the month of January, 1922, computed at the rates which Complainant charged during that month, under the temporary restraining order granted in this cause, amounted to \$871,093.28. Deducting from that the operating expenses and cost of gas, as aforesaid, that is \$510,350.90, leaves a net profit of \$360,742.38.

Allowing, as stated in the next to the last preceding paragraph, 10 per cent for loss in transportation and an additional 10 per cent for loss in distribution by Complainant would amount to a total loss of 318,334,000 cubic feet for the month of January, 1922, alone. This amount of gas at the minimum rate of 10 per cent per thousand cubic feet at the well amounts to \$31,833.40; that this is the basis recognized by the Defendants in the promulgation of its rate orders for gas and that at this rate the consumers supplied with gas by the Oklahoma Natural Gas Company direct and through other distributing utilities would be nearly \$400,000.00 per year which the consumers would have to be called upon to pay for gas from which they derive no benefit whatever and that too in addition to the further loss of 10 per cent allowed the utilities supplied by the Oklahoma Natural Gas Company other than its own.

Affiant further says that the taxes included in the above computation for the month of November, 1921, of \$42,247.55 is supposed to be one twelfth of the total taxes which Complainant will have to pay during the entire year; that at that rate the taxes for the year would amount to more than one half million dollars and that Affiant is informed and believes is much in excess of the taxes which Complainant will really have to pay during the present year and that any deduction from that amount will increase the net profits accordingly. On page 27 of Complainant's annual report to Defendants for the year ended December 31, 1920, is entered a total of only \$233,357.34 general taxes, \$2,115.58 gross production tax on gas, \$12,192.48 capital stock tax and \$121,000.00 federal income tax. Affiant says that according to his best information the federal income tax is not a proper charge against the operating revenues of a

public service corporation but is rather a debit against the net profits accruing to the stockholders but that in any event the taxes as estimated by Complainant in the month of November, 1921, are manifestly considerably in excess of what the Complainant will really have to pay in taxes of every description. Affiant says further that the payment of federal income tax amounting to \$121,000.00 during the year 1920 shows that Complainant enjoyed a very large measure of prosperity during that period and that its accrual of taxes at the rate of upwards of one half million dollars during the year 1921 indicates that Complainant anticipated a greater measure of prosperity during the latter year.

Affiant further says that he is informed and believes that Complainant's actual investment in facilities necessary used and useful in producing, purchasing, transporting and distributing gas to its customers is much less than 10 millions of dollars and that a careful audit of Complainant's books, records and accounts would verify the truth of this suggestion. On page 31 of Complainant's annual report to Defendants for the year ended December 31, 1920, is entered a capital item of \$3,521,159.74 for mineral, gas and oil rights and lease holds and of that enormous amount only \$73,520.78 is shown to represent real estate in fee. On page 14 of the said annual report under the *tital* "Expenditures for outside operations" appears 358 a capital item of \$102,452.46 for automobiles. Said amount would purchase one hundred automobiles at an average of \$1,000.00 each or two hundred up to date Ford cars. On page 16 of said report appears a debit item in Complainant's income account of \$981,145.66 for depreciation and depletion. The income account is thus made to reflect a debit balance of \$894,574.03, notwithstanding the payment to the Federal Government of an income tax to the amount of \$121,000.00.

Affiant further avers that all of the figures quoted in this affidavit were furnished by Complainant; that there has not been time in which to make copies of the data since a large part of it was received so as to enable the attachment of the originals to the affidavit as exhibits but that all of the documents from which the said figures are quoted are now in court and may be verified in five minutes.

W. E. GRIMES.

Subscribed and sworn to before me this 27th day of February, 1922.

[SEAL]

J. S. GRAM,  
*Notary Public.*

My Commission expires Jan. 1, 1923.

Endorsed: Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk. By E. V. Haws, Deputy.

359 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Rebuttal Affidavit of Thomas H. McConnell.*

Thomas H. McConnell, on his oath states that he resides in Oklahoma City, Oklahoma, is fifty-four years of age, and is engaged in the business of abstracting titles to real estate, and has been so engaged in the State of Oklahoma for nineteen years.

He further states that on or about the 15th day of July, 1921, for the purpose of ascertaining the relation which the market value of real estate in Oklahoma County, Oklahoma, bore to the value at which the same was assessed in said county for taxation, this affiant made an examination of the records of conveyances of real estate in Oklahoma County, Oklahoma, noting the date of the conveyances, the description of the property conveyed, and the consideration paid for said property, determining the consideration paid both by the statement of the consideration recited in said conveyances and also by the amount of revenue stamps attached to said conveyances; and this affiant also examined the records of the county assessor of Oklahoma County, Oklahoma, and ascertained the valuation at which the said property so conveyed was assessed for taxation after said assessments had been equalized by the County Equalization Board of Oklahoma County; and this affiant made a list of the said

360 properties, conveyances and assessments so examined by him, which said list is representative of the relation of the values of real estate in Oklahoma County to the assessment thereon for the purpose of taxation. Said list includes land sold in practically all parts of Oklahoma County, shortly before and shortly after the tax assessing date, which tax assessing date was January 1, 1921.

A copy of said list so made by affiant is hereto attached, marked "Exhibit A," and made a part hereof, and the same is true and correct. In said Exhibit A, the date given opposite each entry is the date of the conveyance of the real estate conveyed. Said entries also show the grantors and the grantees, a description of the land conveyed, and the amount paid for said land. Following that is the assessment placed upon said land. The total amount paid for all of the lands shown in said Exhibit A was the sum of \$2,759,958.66, and the total amount at which the said lands and improvements were assessed for taxation as of January 1, 1921, was the sum of \$1,492,850.00, which said assessed value was 54% of the sum at

which the said real estate was sold shortly before or shortly after the date of said assessment.

Further affiant saith not.

THOMAS H. McCONNELL.

Subscribed and sworn to before me this 10th day of February, 1922.

[SEAL.]

EMMA SEBERGER,  
*Notary Public.*

My commission expires Jan. 12, 1925.

*the Lots or Land, and the Assessed Value of the Improvements as Assessed by the County Assessor for the Year 1921.*

Feb. 8th, 1921. Deed from Mrs. E. S. Capsadle formerly Ella Rice Skelton to Helen Gloyd Hampton for E. 11 ft. of Lot 3 and all of lot 4 in Block 7 Oklahoma City for a consideration of.....	\$70,000.00	
(Revenue paid on deed \$55.00.)		
Grantee assumes Mtge. of \$15,000.00.		
Lots assessed at.....		\$24,800.00
Improvements assessed at.....		\$20,500.00
April 1st, 1921. Deed to Jerry K. McCoy for lots 13 and 14 in Block 10 Oklahoma City consideration of.....	\$24,000.00	
Assessed value of lots.....		\$8,500.00
Improvements.....		\$6,000.00
April 24, 1921. Deed to James Gerson for the North 100 feet of Lots 21 and 22 in Blk. 21 Oklahoma City for consideration of.....	\$65,000.00	
Assessed value of lots.....		\$20,000.00
Improvements.....		9,000.00
Dec. 29th, 1920. Deed to Wade Hampton for Lots 1 and 2 and W. 14 ft. of Lot 3 in Block 7 Oklahoma City for consideration of.....	\$250,000.00	
Assessed value of lots.....		\$186,200.00
Improvements.....		14,000.00
Feb. 1st, 1921. Deed to Mary L. Darnell for Lot 9 in Block 32 Oklahoma City, for consider- of.....	\$6,000.00	
Lots assessed at.....		\$3,000.00
Improvements assessed at.....		400.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

June 30th, 1921. Deed to Lots 14, 15, & 16 in Block 50 Oklahoma City to Haliburton Company for an undivided $\frac{1}{2}$ interest, consideration of.....	\$126,666.66
and excepts a mortgage of \$190,000.00 one half of which grantee agrees to pay and the obligation of 99 year lease.	
Lots assessed at.....	\$106,250.00
Improvements assessed at.....	\$180,000.00
May 14th, 1921. Deed to Lottie Swatek for Lots 17 and 18 in Block 52 Oklahoma City for consideration.....	\$80,000.00
Amount of Revenue on deed \$80.00.	
Grantee assumes mortgage of \$20,000.00.	
Lots assessed at.....	\$30,000.00
Improvements at.....	10,000.00
November 8th, 1920. Deed to Harry W. Hutchins for Lot 9 in Block 61 Oklahoma City consideration of.....	\$5,000.00
Lot assessed at.....	\$3,000.00
Improvements at.....	300.00
Deed on May 5, 1920 to Eli Shire for Lots 13 & 14 in Block 63 Oklahoma City, consideration of.....	\$66,500.00
(Revenue on deed \$35.50.)	
Grantee assumes a mortgage of \$31,000.00.	
Lots assessed at.....	\$20,000.00
Improvements assessed at.....	\$30,000.00
April 12, 1920. Deed to E. A. Walker for South 90 feet of Lot 3, Block 22 Oklahoma City for consideration of.....	\$75,000.00

Amount of Revenue on Deed, \$55.00.  
Grantee assumes mortgage of \$20,000.00.

Lot assessed at.....	\$45,000.00
Improvements assessed at.....	5,000.00

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June 2nd, 1919. Deed from Scott to K. C. Rosenfield for Lots 13 and 14 in Block 35 Oklahoma City, for consideration of..... \$150,000.00

(Revenue on Deed, \$113.00.)

Grantee assumes mortgage of \$37,000.00.

Lots assessed at.....	\$112,500.00
Improvements assessed at.....	16,000.00

March 23, 1920. Deed to J. E. Hawk for Lot 8 in Block 61 Oklahoma City for consideration of..... \$5,000.00

Lot assessed at.....	3,000.00
Improvements assessed at.....	600.00

November 29th, 1919. Deed to W. T. Hales for Lots 17, 18, 19, 20 and 21 in Block 33 in Oklahoma City, consideration..... \$135,000.00

Assessed value of lots.....	\$94,000.00
Improvements.....	\$10,580.00

July 19th 1920. Deed to Tony Hagerms to South half of North West ¼ of Section 15 in Twp. 11 N. Range 4 West of I. M. consideration of..... 9,000.00

Land assessed at.....	3,600.00
Improvements.....	400.00

363 *List of Properties Conveyed Within the Last Two Years.—Continued.*

Jacob B. Ward to Reuben P. Cristy, Deed dated 4/8/1921. Conveying Lots 3 & 4 and S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Section 5 Twp. 11 N. Range 1 E. Consideration of..	\$3,000.00
Assessed value of land.....	\$1,120.00
Improvements .....	400.00
Sam Wasik to John Gesioroski, Deed dated 12/28/1920, conveying the N. E. $\frac{1}{4}$ of Sec. 12, Tp. 11 N. R. 1 E. for Consideration of.....	\$5,000.00
Assessed value of the land.....	\$1,400.00
Improvements .....	200.00
Michael Drzeweicki to John Drew, Deed dated 1/18/1921 conveying the S. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 13 Tp. 11 N. R. 1 E. I. M. consideration of .....	1,000.00
Assessed value of land.....	\$700.00
Improvements .....	200.00
John T. Bradley to J. O. Jordan, Deed dated March 22, 1920 conveying the W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Section 27 in Twp. 11 North Range 1 East of the I. M. Consideration .....	1,400.00
Land assessed at.....	700.00
Improvements, none.	
Flora A. Woodson to W. J. Stover, Deed dated July 6th 1921 conveying N. E. $\frac{1}{4}$ of Section 32 in Twp. 11 N. Range 1 East of the I. M. for consideration of....	\$2,000.00
Land assessed at.....	\$1,100.00
Improvements .....	100.00

Daniel Walker to Albert M. Maxey, Deed dated Oct. 21, 1920 conveying West 61½ rods of the S. ½ of S. W. ¼ of Sec. 5 in Twp. 12 North Range 1 East of the I. M. 30 acres consideration.....	\$6,000.00	
Land assessed at.....		\$2,400.00
Improvements, none.....		
Frank A. Wolf to West Manwel, Deed dated 4/16, 1921 conveying E. ½ of N. E. ¼ and N. ½ of S. E. ¼ of Section 7 Twp. 12 N. R. 1 E. consideration.....	\$24,000.00	
Land assessed at.....		\$12,000.00
Improvements.....		500.00
Wm. A. Skorkowsky to Mike Monek, Deed dated 1/19, 1920 conveying E. ⅓ of S. E. ¼ of Sec. 10-T. 12, N. R. 1 E. consideration.....	\$5,200.00	
Land assessed at.....		900.00
Improvements.....		800.00
A. J. Fluke to Pito Manyk, Deed dated 1/12/20 conveying W. ½ of S. E. ¼ of Section 13, Twp. 12 North Range 1 East of I. M. consideration.....	\$4,500.00	
Land assessed at.....		900.00
Improvements.....		300.00
John Thompson to Josiah Browning, Deed dated 8/24/20 conveying E. ½ of S. E. ¼ of 15-T. 12- 1 E. consideration.....	\$8,000.00	
Land assessed at.....		1,500.00
Improvements.....		200.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

William Morrow to Godlieb Ertel, Deed dated 6/8/20 conveying W. ½ of S. E. ¼ of Section 24 Twp. 12 North Range 1 E. for consideration of .....	\$12,000.00
Land assessed at.....	3,000.00
Improvements .....	500.00
364	
William E. Seaman to Mary Ennis et al., Deed dated 11/9/20 conveying the N. W. ¼ of Section 32 in Twp. 11 N. Range 1 East for consideration of .....	\$4,000.00
Land assessed at.....	\$2,000.00
Improvements assessed at.....	150.00
Geo. P. Taylor to Grover S. Wagon, Deed dated 4/14/20 conveying the S. W. ¼ of Section 1 in Twp. 13 N. Range 1 East I. M. consideration .....	\$2,250.00
Land assessed at.....	1,150.00
Improvements at .....	500.00
Warner Davis to Allen Booker, Deed dated 1/31/20 conveying S. W. ¼ of Section 15 in Tp. 13 N. R. 1 E. for consideration of.....	\$7,450.00
Land assessed at.....	\$1,800.00
Improvements at .....	200.00
John Springer to Sam W. Patterson, Deed dated 10/2/20 conveying N. E. ¼ of Sec. 30 in Tp. 13 N. Range 1 East of I. M. consideration .....	\$6,500.00
Land assessed at.....	\$1,680.00
Improvements assessed at .....	420.00

Mary Mickle to H. W. Conrad et al., Deed dated 1/26/20 conveying S. 1/2 of S. W. 1/4 of Sec. 9, Tp. 14 N. R. 1 E. consideration of.....	\$1,200.00
Land assessed at.....	510.00
Improvements at.....	70.00
Geo. R. Mossman to Fred Graham, Deed dated 2/9/1920 conveying the S. W. 1/4 of Sec. 11, Tp. 14, N. R. 1 East I. M. for consideration of.....	\$6,000.00
Land assessed at.....	\$2,600.00
Improvements.....	600.00
C. E. Lennan to J. S. Howard, Deed dated May 11 1920 conveying the S. E. 1/4 of Section 6 Twp. 11 N. R. 1 West, for consideration of.....	\$5,000.00
Land assessed at.....	\$1,280.00
Improvements assessed at.....	320.00
Jessie Drake to Rachael M. Thomas, Deed dated Dec. 18, 1920 conveying N. 1/2 of N. W. 1/4 of Section 9 Tp. 11 N. R. 1 West consideration.....	\$3,000.00
Land assessed at.....	640.00
Improvements assessed at.....	50.00
John A. Steman to Gus Thompson, Deed dated 12/21/20 conveying N. W. 1/4 of Sec. 15 Tp. 11 N. R. 1 W. for consideration of.....	\$2,250.00
Land assessed at.....	\$1,500.00
Improvements at.....	100.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

John E. Holbert to L. J. Stephens, Deed dated 1/15/1921 conveying N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 21 Tp. 11 N. R. 1 W. consideration of .....	\$3,000.00	
Assessed .....	\$1,200.00	
Improvements .....	500.00	
R. E. Smith to Edw. W. Wilds, deed dated 2/22/21 conveying E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 29 Tp. 11 N. R. 1 W. consideration of .....	\$3,500.00	
Land assessed at .....		\$1,100.00
Improvements .....		200.00
Marc H. Bridge to J. W. Secrest, Deed dated 4/19/21 conveying S. W. $\frac{1}{4}$ of Sec. 35 in Tp. 11 N. R. 1, W. I. M. consideration of .....	\$1,350.00	
Land assessed at .....		\$1,200.00
Improvements .....		200.00
365		
C. E. Woodworth to O. H. Deal, Deed dated 12/29/1919 conveying East $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 4 Tp. 12 N. R. 1 W. consideration .....	\$4,000.00	
Lands assessed at .....		800.00
Improvements .....		200.00
Bertha Moore to Dayton D. Crum, Deed dated 12/24, 1920 conveying W. L./2 of N. W. $\frac{1}{4}$ of Sec. 16-12-1 W. consideration of .....	\$1,500.00	
Land assessed at .....		\$600.00
Improvements at .....		300.00

Will O. Rogers to R. R. Landon, Deed dated 3/21/21 conveying E. ½ of N. E. ¼ of Sec. 19 Twp. 12 N. R. 1 W. I. M. consideration of.....	2,250.00	
Land assessed at.....		\$800.00
Improvements .....		200.00
Robt. E. Johnston to M. J. Patrick, Deed dated 2/1/21 conveying N. W. ¼ of Sec. 28 Twp. 12 N. R. 1 W. I. M. consideration of.....	\$5,500.00	
Land assessed at.....		\$1,500.00
Improvements .....		200.00
C. D. Peck to B. E. Clark, Deed dated 2/28/21 conveying N. E. ¼ of Sec. 29 Twp. 12 N. R. 1 W. I. M. consideration of.....	\$4,500.00	
Land assessed at.....		1,400.00
Improvements .....		100.00
Geo. W. Kinter to Chas. U. Grant, Deed dated 9/25/20 conveying W. ½ of S. W. ¼ of Sec. 35 in Twp. 12 N. R. 1 West of the I. M.....	\$5,200.00	
Assessed value of land.....		800.00
Improvements .....		200.00
B. Coleman to W. H. Oder, Deed dated 3/13/20 conveying the N. E. ¼ of Sec. 9 Twp. 13 N. R. 1 West I. M. consideration of.....	\$2,000.00	
Land assessed at.....		1,200.00
Improvements .....		100.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

Susan G. Higdon to S. H. McCall, Deed dated 3/13/21 conveying S. E. $\frac{1}{4}$ of Sec. 16 tp. 13 N. R. 1 West I. M. consideration.....	\$8,250.00	
Land assessed at.....	\$1,680.00	
Improvements .....	\$1,000.00	
D. M. Beaty to A. E. Davenport, Deed dated 8/21/20 conveying Lots 2-3-4 & 5 in Section 22 and Lots 9 & 10 in N. E. $\frac{1}{4}$ of Sec. 22 in Twp. 13 N. R. 1 W. 158 acres, consider.....	\$14,000.00	
Lands assessed at.....	\$2,700.00	
Improvements at.....	100.00	
Mable L. Smith to C. N. Hewitt, Deed dated 9/16/20 conveying N. E. $\frac{1}{4}$ of Sec. 26, twp. 13 N. R. 1 W. consideration of.....	\$16,000.00	
Assessed value of land.....	\$5,500.00	
Improvements .....	500.00	
D. M. Beaty to A. F. Fricke, Deed dated 10/5/1920 conveying W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Section 28 Twp. 13 N. R. 1 West consideration.....	\$4,000.00	
Land assessed at.....	\$800.00	
Improvements .....	400.00	
366		
L. G. Tinsley to Geo. W. Kinter, Deed dated 2/3/1920 conveying W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 35 in Twp. 13 N. R. 1 West of the I. M. consideration of.....	\$4,350.00	
Land assessed at.....	\$1,600.00	
Improvements .....	150.00	

Levi Butler to L. H. Teuscher, Deed dated 1/7/21 conveying N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Section 8 in Twp. 14 North Range 1 West for consideration of .....	\$1,200.00	
Land assessed at .....		\$640.00
Improvements none .....		
Ed Hughes to Frank Barnett, Deed dated 1/26/21 conveying S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Section 13 Twp. 4 N. Range 1 West I. M. consideration .....	\$2,000.00	
Land assessed at .....		600.00
No Improvements .....		
Blanche McNeal to Chas. H. Holbrook, Dated 11/18/20 conveying the S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Section 19 Tp. 14 N. R. 1 W. consideration of .....	\$2,900.00	
Lands assessed at .....		\$1,280.00
Improvements .....		200.00
Chas. E. Thompson to J. G. Adams, Deed dated 11/27/20 conveying N. E. $\frac{1}{4}$ of Sec. 24. Twp. 14 N. R. 1 W. I. M. consideration of .....	\$4,000.00	
Land assessed at .....		\$1,800.00
Improvements .....		500.00
J. L. Lancaster to C. C. Childers, Deed dated June 13, 1920 conveying S. W. $\frac{1}{4}$ of Sec. 3 in Twp. 11 N. R. 2 W. I/M. consideration of .....	\$12,000.00	
Land assessed at .....		\$3,500.00
Improvements at .....		600.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

O. E. Stuart to Chas. W. Crosby, Deed dated May 24, 1920 conveying S. E. $\frac{1}{4}$ of Sec. 5 in Twp. 11, N. R. 2 W. consideration of.....	\$18,400.00
Lands assessed at.....	\$7,000.00
Improvements .....	700.00
T. H. White to W. G. Vanderver, Deed dated 2/16, 1920 conveying S. E. $\frac{1}{4}$ of Sec. 22 in Tp. 11 N. R. 2 W. I. M. consideration of.....	\$11,000.00
Lands assessed at.....	\$3,200.00
Improvements at.....	500.00
Florence G. Fuller to M. B. Comstock, Deed dated Aug. 3, 1920 conveying an undivided $\frac{1}{4}$ interest in N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 23 in Twp. 11 North Range 2 West I. M. for consideration of.....	\$1,000.00
Lands assessed at.....	\$1,600.00
Improvements at.....	200.00
H. B. Shea to J. M. Sanders, Deed dated 12/4/1920 conveying E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 24 in Twp. 11 N. R. 2 West I. M. consideration.....	\$5,400.00
Land assessed at.....	1,600.00
Improvements .....	500.00
Fred Baetke to John Zafoudik, Deed dated 8/31/1920 conveying S. W. $\frac{1}{4}$ of Sec. 27 Twp. 11 North R. 2 West consideration of.....	\$7,000.00
Lands assessed at.....	\$4,000.00
Improvements assessed.....	500.00

William A. Stephens to Oliver S. Petty, Deed dated 3/3/1920 conveying N. E. $\frac{1}{4}$ of Section 30 in Twp. 11 N. R. 2 West I. M. for consideration of.....	\$12,500.00	
Land assessed at.....		\$3,600.00
Improvements at.....		600.00
Oscar C. Wilcox to Earl R. Kotterman, Deed dated 3/12/21 conveying the S. W. $\frac{1}{4}$ of Sec. 32 in Twp. 11, N. R. 2 W. consideration.....	\$12,000.00	
Land assessed at.....		3,400.00
Improvements.....		800.00
C. R. Cauthron to William McCully, Deed dated 4/2/1920 conveying N. W. $\frac{1}{4}$ of Sec. 34-11-N. Range 2 West consideration of.....	\$8,500.00	
Lands assessed at.....		\$2,700.00
Improvements assessed at.....		700.00
Rose Kieffer to Robt. M. Jones, Deed dated 7/20/1920 conveying Lots 1 & 2 and N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ Sec. 7-12-2 W. consideration of.....	\$17,000.00	
Land assessed at.....		\$4,000.00
Improvements none.....		
W. B. Bryant to C. W. Woodruff, Deed dated 3/4/20 conveying N. E. $\frac{1}{4}$ of Sec. 6, tp. 13 N. R. 2 W. consideration of.....	\$1,700.00	
Lands assessed at.....		\$1,300.00
Improvements assessed at.....		100.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

Ralph F. Shipman to W. Woodruff, Deed dated 8/10/1920 conveying N. W. $\frac{1}{4}$ of Sec. 8-Tp. 13 N. R. 2 W. consideration of.....	\$3,500.00
Land assessed at.....	\$1,400.00
Improvements .....	100.00
Chas. D. Allen to R. W. Henderson, Deed dated 1/29/1920 conveying N. W. $\frac{1}{4}$ of Sec. 11 in Twp. 13 N. R. 2 W. consideration of.....	\$3,200.00
Land assessed at.....	\$1,400.00
Improvements .....	200.00
J. A. Swearingen to H. L. Lair, Deed dated 1/4/21 conveying S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ Sec. 26 and S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Sec. 27 in Twp. 13 N. R. 2 W. for consideration of.....	\$10,000.00
Land assessed at.....	\$4,550.00
Improvements .....	100.00
Roland Lockwood to Vivian Phillips, Deed dated 11/23/20 conveying the S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 28-13-2 W. I. M. consideration of.....	\$4,000.00
Land assessed at.....	\$2,300.00
Improvements at.....	500.00
May Canada to J. F. Rahmann, Deed dated 12/15/20 conveying Lots 3 & 4 and S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ of Sec. 1-14-2 W. consideration of.....	\$5,300.00
Land assessed at.....	\$1,300.00
Improvements at.....	300.00

J. A. Lufburrow to G. L. Sante, Deed dated 3/10/20 conveying N. E. $\frac{1}{4}$ of Sec. 11 Twp. 14 N. R. 2 West I. M. consideration of.....	\$4,000.00
Lands assessed at.....	\$1,400.00
Improvements at.....	600.00
Peter Junker to W. B. Bryant, Deed dated 9/4/1920 conveying the S. W. $\frac{1}{4}$ of Section 28 Tp. 14 N. Range 2 West of the I. M. consideration of.....	\$3,000.00
Lands assessed at.....	\$1,400.00
Improvements .....	400.00
C. J. Pfautch to J. H. Johnson, Deed dated 11/22/20 conveying N. W. $\frac{1}{4}$ of Section 29 in Twp. 14 N. Range 2 West consideration of.....	\$4,000.00
Land assessed at.....	\$3,000.00
Improvements at.....	\$1,000.00
Otto Eckert to W. W. Dozier, Deed dated 8/16/20 conveying W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of 31-14-2 West I. M. consideration of.....	\$6,600.00
Land assessed at.....	\$2,100.00
Josiah L. Gray to W. B. Bryant, Deed dated Jan. 15, 1920 conveying Lots 1 & 2 and S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Section 3-13-3 W. consideration.....	\$10,650.00
Land assessed at.....	\$4,000.00
Improvements at.....	600.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

H. L. Griffin to John A. Burkhead, Deed dated 9/17/1920 conveying S. W. $\frac{1}{4}$ of Sec. 3 in Twp. 13 N. R. 3 W. consideration of.....	\$12,500.00	
Land assessed at.....		\$4,000.00
Improvements .....		600.00
S. T. Rose to Rose May Jennings, Deed dated Nov. 29, 1920 conveying N. E. $\frac{1}{4}$ of Section 23 Twp. 13 N. R. 3 West I. M. consideration.....	\$5,000.00	
Lands assessed at.....		\$2,500.00
Improvements .....		325.00
Carrie Austin to John M. Angles, Deed dated 2/3/21 conveying the S. E. $\frac{1}{4}$ of Section 2 in Twp. 14 N. R. 3 W. I. M. consideration.....	\$6,000.00	
Land assessed at.....		\$2,260.00
Improvements assessed at.....		800.00
Otto Eckert to W. W. Dozier, Deed dated 8/16, 1920 conveying the N. E. $\frac{1}{4}$ of Section 10 in Twp. 14, N. Range 3 W. consideration of.....	\$6,600.00	
Lands assessed at.....		\$2,100.00
Ray A. Fancher to E. D. Shelton, Deed dated 6/29/20 conveying N. W. $\frac{1}{4}$ of Sec. 15 in Twp. 14 North Range 3 West I. M. consideration.....	\$8,000.00	
Lands assessed at.....		\$2,700.00
Improvements .....		\$1,500.00

W. J. Price to J. T. O'Toole, Deed dated 1/21/21 conveying the S. W. $\frac{1}{4}$ of Section 19 in Twp. 14 N. Range 3 West and the North West of Section 30 Twp. 14 N. R. 3 W. for consideration of . . . . .	\$8,500.00	
and excepting a mortgage of . . . . .	\$9,500.00	
Lands assessed at. . . . .		\$8,200.00
Improvements . . . . .		800.00
Jeremiah N. Smith to M. C. Momsen, Deed dated 1/23/20 conveying the N. E. $\frac{1}{4}$ of Section 32 in Twp. 14 N. R. 3 W. consideration of . . . . .	\$12,000.00	
Lands assessed at. . . . .		\$4,500.00
Improvements at. . . . .		700.00
John L. Hill to Joe Magerus, Deed dated 1/1/1920 conveying Lots 14 of N. W. $\frac{1}{4}$ & Lots 15, 16, 17 & S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ Section 2 and Lot 7 of Section 3 all in Twp. 11 N. R. 4 W. I. M. consideration of . . . . .	\$14,000.00	
Lands assessed at. . . . .		\$9,920.00
Improvements assessed at. . . . .		600.00
Anthony Devine to J. W. Neal, Deed dated 4/19/20 conveying Lot 5 and N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 3 Twp. 11 N. R. 4 W. consideration of 82 acres . . . . .	\$8,000.00	
Lands assessed at. . . . .		\$4,400.00
No Improvements. . . . .		
J. B. Smith to A. H. Rogers, Deed dated 4/10/20 conveying N. W. $\frac{1}{4}$ of Sec. 8 in Twp. 11 N. R. 4 West I. M. consideration of . . . . .	\$18,000.00	
Lands assessed at. . . . .		\$9,000.00
Improvements. . . . .		1,000.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

B. Vandean to Ralph J. Peck, Deed dated 7/14, 1920 conveying Lots 1 and 2 of Sec. 9 in Tp. 11 N. R. 4 West I. M. consideration of.....	\$5,000.00
Land assessed at.....	\$2,500.00
Pearl B. Watkins to Tony Magerus E. $\frac{1}{2}$ of Deed dated 7/19/20 conveying E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 15 Twp. 11 North Range 4 W. consideration .....	\$9,000.00
Lands assessed at.....	\$3,600.00
Improvements none.....	
Christian A. Berg to William Jacquart, Deed dated 6/11/20 conveying the N. W. $\frac{1}{4}$ of Sec. 17 in Tp. 11 N. R. 4 West I. M. consideration of .....	\$13,000.00
Lands assessed at.....	\$7,200.00
No Improvements.....	
O. C. Hall to E. R. Butler, Deed dated 12/13/20 conveying S. E. $\frac{1}{4}$ of Section 19 in Twp. 11 North Range 4 West I. M. consideration of.....	\$18,000.00
Land assessed at.....	\$7,200.00
— .....	\$1,000.00
Hugo Mohr to L. C. Whitt, Deed dated 9/11/20 conveying S. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Section 24 in Twp. 11 North R. 4 West consideration of.....	\$9,500.00
Land assessed at.....	\$3,500.00
Improvements .....	1,000.00

J. L. Wilkin to E. G. Dennis, Deed dated 9/11/20 conveying the all of Section 27 in Twp. 11 North Range 4 West I. M. consideration of.....	\$54,000.00
Lands assessed at.....	\$29,200.00
Improvements .....	1,400.00
R. J. Edwards to D. B. Harrison, Deed dated 1/3/20 conveying N. E. $\frac{1}{4}$ of Section 28 in Twp. 11 North Range 4 West I. M. consideration of.....	\$14,000.00
Land assessed at.....	\$7,200.00
Improvements assessed at.....	150.00
Fred E. Kimblade to J. H. Johnston, Deed dated 12/13/1920 conveying the N. E. $\frac{1}{4}$ of Section 35 in Twp. 11 North Range 4 W. consideration of.....	\$13,500.00
Land assessed at.....	\$8,400.00
Improvements assessed at.....	800.00
Samuel M. Wylie to M. M. Vanderwork, Deed dated 2/9/1920 conveying S. W. $\frac{1}{4}$ of Section 5 in Twp. 12, North, Range 4 West of the I. M. consideration .....	\$16,500.00
Lands assessed at.....	\$5,000.00
Improvements .....	500.00
Joseph L. Paschal to E. C. Wills, Deed dated — conveying E. $\frac{1}{2}$ S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of Sec. 12 Twp. 12 N. R. 4 W. consideration .....	\$4,000.00
Land assessed at.....	300.00
Improvements .....	500.00

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Catherine Wood to J. V. Smith, Deed dated 6/9/21 conveying the W. ½ of E. ½ of S. W. ¼ of S. E. ¼ of Section 12 Twp. 12 North Range 4 West I. M. consideration of .....	\$5,000.00	
Lands assessed at .....		\$700.00
Improvements .....		900.00
Grace D. Baker to Lloyd W. Anderson, Deed dated 8/26/1920 conveying the North ½ of S. E. ¼ of Section 19 in Twp. 12 North Range 4 West consideration of .....	\$7,200.00	
Land assessed at .....		\$1,760.00
Improvements assessed at .....		600.00
Milton J. Jester to J. W. Hukill, Deed dated 1/18/21 conveying the West half of S. E. ¼ of Section 32 in Twp. 12 N. R. 4 W. for consideration of .....	\$15,000.00	
All of the South East quarter is assessed at .....		\$11,500.00
Improvements assessed at .....		1,200.00
John Canning to C. H. Knox, Deed dated 8/13/20 conveying W. ½ of N. W. ¼ of Section 35 in Twp. 12 North Range 4 West I. M. consideration .....	\$12,000.00	
Land assessed at .....		3,200.00
Improvements assessed at .....		1,000.00
Emil H. Sueman to W. L. Kuehne, Deed dated 4/7/20 conveying Lots 3 & 4 and S. ½ of N. W. ¼ of Section 3 Twp. 13 N. R. 4 W. consideration of .....	\$10,000.00	
Land assessed at .....		\$3,500.00
Improvements assessed at .....		200.00

John W. Schwoerke to James B. Lenhart, Deed dated 4/10/1920 conveying N. E. ¼ of Section 5 Twp. 13 N. R. 4 W. I. M. consideration of .....	\$9,000.00	
Land assessed at .....		\$3,750.00
Improvements .....		300.00
W. P. Huggard to A. B. Bush, Deed dated 6/2/20 conveying the S. E. ¼ and S. W. ¼ of Section 6 in Twp. 13 N. R. 4 W. Consider .....	\$18,000.00	
Lands assessed at .....		\$6,500.00
Improvements assessed at .....		900.00
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J. A. Schneider to Laura Kincaid, Deed dated 2/21/21 conveying Lots 25 & 26 in Block 16 in University Addition consideration of .....	\$4,500.00	
Lots assessed at .....		\$500.00
Improvements assessed at .....		\$1,000.00
Mary L. Roberts to William V. Coakley, Deed dated 2/25/21 conveying Lots 23 and 24 in Blk. 18 in University Addition consideration of .....	\$3,800.00	
Lots assessed at .....		1,000.00
Improvements at .....		1,000.00
Susan McFaden to Robert F. Waggoner, Deed dated 4/18/21 conveying Lots 11 & 12 in Blk. 24 in University add. consideration of .....	\$7,000.00	
Lots assessed at .....		\$600.00
Improvements assessed at .....		\$2,500.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

H. R. Harrison to Lucy Clendenin, Deed dated — conveying Lots 11 & 12 in Block 37 in University Add. for consideration of .....	\$4,600.00	
Lots assessed at .....		500.00
Improvements at .....		\$2,000.00
Mary C. Upshor to M. E. Fruin, Deed dated — conveying Lots 7 & 8 in Block 44 in University Add. consideration of .....	\$10,000.00	
Lots assessed at .....		\$1,300.00
Improvements assessed at .....		\$3,500.00
W. W. Snipes to Jewell M. Cooter, Deed dated — conveying Lots 20 & 21 in Block 46 in Univ. Addition for consideration of .....	\$5,000.00	
Lots assessed at .....		\$1,400.00
Improvements at .....		\$1,300.00
Mary L. Griffith to Wm. Edwin Pratt, Deed dated 3/18/21 conveying Lots 25 & 26 in Blk. 47 in University Addition for consideration of .....	\$6,500.00	
Lots assessed at .....		700.00
Improvements assessed at .....		\$2,500.00
H. H. Julian to G. K. Hays, Deed dated — conveying Lots 9 and 10 in Block 51 in University Addition for consideration of .....	\$8,500.00	
Lots assessed at .....		\$1,400.00
Improvements at .....		\$3,800.00

Grace M. Leonard to James G. Scales, Deed dated 1/3/21 conveying Lots 19 and 20 Block 54 in University Addition to Oklahoma City, consideration	\$15,000.00	
Lots assessed at		\$2,000.00
Improvements		\$4,400.00
Paul A. Walker to Lenna A. Critcher, Deed dated 3/23/21 conveying Lots 1 & 2 in Block 56 University Add. for consideration of	712.00	
Lots assessed at		
Clara B. Wills to L. C. Ritter, Deed dated 11/11/20 conveying Lots 17 and 18 in Block 63 University Addition to Oklahoma City for	\$8,200.00	\$560.00
Lots assessed at		
Improvements		
Hubert McCabe to Frank Bergdoll, Deed dated 8/30/20 Conveying Lots 3 & 4 in Blk. 66 in University Addition to Oklahoma City, for consideration of	\$14,000.00	\$2,000.00
Lots assessed at		\$2,000.00
Improvements		\$1,600.00
372		\$4,200.00
Douglas A. Yeager to F. E. Kennamer, Deed dated 2/10/21 conveying Lots 1 and 2 in Block 68 in University Add. for consideration of	\$9,650.00	
Lots assessed at		\$1,125.00
Improvements at		\$3,000.00
Lillie M. Pryer to J. C. French, — Dated 4/5/20 Conveying Lots 7 & 8 in Block 73 in University Addition consideration of	\$15,000.00	
Lots assessed at		\$2,000.00
Improvements assessed at		\$4,000.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

Gustave A. Paul to S. K. Ingham, Deed conveying Lots 13 and 14 in Block 74 in University Addition, consideration of .....	\$15,500.00	
Lots assessed at .....		\$3,000.00
Improvements assessed at .....		\$6,000.00
A. R. Alford to Mattie B. West, Deed conveying Lots 3 & 4 in Block 75 in University Addition to Oklahoma City consideration .....	\$10,000.00	
Lots assessed at .....		\$1,000.00
Improvements at .....		\$3,800.00
D. R. Luttrell to N. F. Fouts, Deed dated 11/1/20 Conveying Lots 29 and 30 in Blk. 76 in University Addition for consideration of .....	\$7,500.00	
Lots assessed at .....		\$1,400.00
Improvements assessed at .....		\$2,000.00
Harry Gordon to Cora M. Mills, Deed dated — conveying Lots 27 and 28 in Block 11 in Maywood Addition for consideration of .....	\$4,500.00	
Lots assessed at .....		\$1,600.00
Improvements at .....		\$1,200.00
Wm. Hrahe to R. A. Hall, Deed dated 4/25/21 conveying Lots 10 and 11 in Block 15 in Maywood Addition for consideration of .....	\$2,750.00	
Lots assessed at .....		\$1,800.00
Improvements at .....		300.00

E. A. Tarnan to James P. Boyle, Deed conveying Lots 21 and 22 Block 16 in Maywood Addition to Oklahoma City consideration of .....	\$7,000.00	
Lots assessed at .....		\$1,800.00
Improvements .....		\$2,200.00
Chas. M. Friss to Mary J. Roberts, Deed dated 5/3/21 conveying Lots 9 and 10 in Block 19 in Maywood addition for consideration of .....	\$5,500.00	
Lots assessed at .....		\$1,200.00
Improvements at .....		\$1,000.00
Ed. J. Delany to Maggie N. Harris, Deed dated 1/5/21 conveying Lot 19 and West 1/2 of Lots 20 in Blk. 24 Maywood Add. to Okla. City consid. ....	\$4,350.00	
Lots assessed at .....		\$950.00
Improvements .....		\$1,550.00
A. H. Williams to George Geyer, Deed dated 11/17/1920 conveying Lot 12 & E. 1/2 of Lot 13 in Blk. 27 Maywood Add. consideration .....	\$3,900.00	
Lots assessed at .....		\$1,315.00
Improvements .....		\$1,000.00
Otto P. Aulbach to Charles E. Howe, Deed conveying Lots 2 & 3 Block 39 in Maywood Addition to Oklahoma City consideration of .....	\$10,000.00	
Lots assessed at .....		\$1,400.00
Improvements .....		\$3,400.00

373 *List of Properties Conveyed Within the Last Two Years.—Continued.*

William McMullen to Hattie Andrews, Deed conveying Lots 11 and 12 in Block 42 in Maywood Addition to Okla. City consideration of .....	\$5,500.00	
Lots assessed at .....		\$1,600.00
Improvements assessed at .....		\$2,400.00
Claude P. O'Brieter to Orten L. Gibson, Deed conveying Lots 11 and 12 Block 24 in Oak Park Addition to Oklahoma City, consideration of .....	\$3,480.00	
Lots assessed at .....		\$1,100.00
Improvements .....		400.00
John Meade to P. W. Holden, Deed dated 2/25/21 conveying Lots 1-2 and 3 in Block 25 in Oak Park Addition to Oklahoma City consideration .....	\$2,500.00	
Lots assessed at .....		\$1,785.00
Improvements .....		400.00
L. H. Ramey to W. D. Gault, Deed conveying Lots 15 & 16 in Block 31 in Oak Park Addition to Oklahoma City, for consideration of .....	\$3,500.00	
Lots assessed at .....		800.00
Improvements .....		\$2,500.00
Mary W. Gunther to M. V. Sampson, Deed conveying Lots 21 and 22 in Block 35 in Oklahoma City, Okla., for consideration of .....	\$7,000.00	
Lots assessed at .....		\$1,125.00
Improvements at .....		\$2,500.00

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March 18, 1921, Deed to R. M. Crisman for Lot 3, & S. ½ of Lot 4 Block 13 in Classen's Marquette Addition, consideration of .....	\$6,000.00	
Land assessed at .....		\$1,400.00
Improvements .....		\$1,000.00
Jan. 25th 1921, Deed to J. Amberg for South 90 feet of Lots 24 and 25 in Block 7 in Classen's Marquette add. for consideration of .....	\$4,500.00	
Land assessed at .....		\$1,045.00
Improvements .....		\$1,200.00
March 25th 1920, Deed to J. W. Maney for Lot 1 in Block 8 in Classen's Marquette Add. to Oklahoma City for consideration of .....	\$4,500.00	
Lot assessed at .....		\$3,550.00
Feb. 9th 1919, Deed to Geo. E. Norman to Lots 15 and 16 in Block 10 Maywood Addition for consideration of .....	\$4,450.00	
Lots assessed at .....		\$1,700.00
Improvements assessed at .....		\$2,200.00
Deed to Joseph H. Martin for Lots 5 & 6 in Block 8 in Classen's East Highland Parked Addition for consideration of .....	\$24,000.00	
Lot assessed at .....		\$1,600.00
Improvements .....		\$8,000.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

Deed for Lots 50 and 51 in Block 6 in Classen's East Highland Parked Addition to Oklahoma City to Ione R. Van Meter for consideration of .....	\$12,500.00	
Lot assessed at .....		\$1,800.00
Improvements assessed at .....		\$5,000.00
November 8, 1920, Deed to G. W. Hinche for Lot 4 in Block 3 in Classen's West Highland Parked Add. to Okla. City for consideration of .....	\$16,000.00	
Lot assessed at .....		\$4,000.00
Improvements at .....		\$5,000.00
Deed to J. B. Klein for Lot 3 in Block 4 in Classen's Highland Parked Addition to Oklahoma City for consideration of .....	\$16,000.00	
Lots assessed at .....		\$3,500.00
Improvements .....		\$6,000.00
April 5, 1920, Deed to Cora Haskett, for Lot- 23 and 24 in Block 8 in Dale Addition to Oklahoma City for consideration of .....	\$5,500.00	
Lots assessed at .....		\$2,400.00
Improvements .....		\$1,000.00
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S. M. Armour to Tony T. Rezny, Deed to Lot 7 in Block 35 in South Oklahoma City Addition to Oklahoma City for consideration of .....	\$1,000.00	
Lot assessed at .....		\$500.00
Improv. assessed at .....		\$100.00

D. H. Flohr to L. M. Webb, Deed dated 6/17/21 conveying Lots 1-2 and 3 in Blk. 14 in South Okla. Add. to Okla. City, consid. ....	\$9,000.00	
Lots assessed at .....		\$3,750.00
Improvements .....		\$1,800.00
Fannie O'Brien to Bernard Konley, Deed conveying Lots 8-9 & 10 in Block 16 South Okla. Add. to Okla. City, consideration of .....	\$3,000.00	
Lots assessed at .....		\$1,600.00
Improvements .....		600.00
G. J. Mathews to Mary E. Jones, Deed conveying Lot 28 in Block 17 in South Oklahoma City, Addition to Okla. City for .....	\$3,000.00	
Lots assessed at .....		\$600.00
Improvements at .....		\$500.00
S. H. McCall to W. M. Phelps, 10/11/20, Deed conveying Lots 14 & 15 in Block 18 in South Oklahoma Add. to Okla. City for consideration of .....	\$4,000.00	
Lots assessed at .....		\$1,750.00
Improvements at .....		\$1,500.00
Samuel Gain to F. R. Broadwell, 3/24/21, Deed conveying W. 12 ft. of Lot 13 and all of Lots 14, 15 & 16 in Block 19 South Okla. Add. for consideration of .....	\$12,500.00	
Lots assessed at .....		\$4,885.00
Improvements at .....		\$4,200.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

Anna M. Gillman to J. H. Spurrier, 2/17/21, Deed conveying Lots 7 and 8 in Blk. 25 South Oklahoma Addition to Okla. City for .....	\$3,500.00	
Lots assessed at .....		\$1,100.00
Improvements .....		400.00
Ethel Goulding to B. H. Markham, 1/24/20, Deed conveying Lots 7 & 8 in Block 11 Oklahoma City for Consideration of .....	\$26,000.00	
Lots assessed at .....		\$12,000.00
Improvements at .....		\$12,000.00
J. K. Wells to Otellie W. Lambert, Deed dated 3/30/21 conveying lot 10 in Block 13 Oklahoma City consideration of .....	\$15,250.00	
Lots assessed at .....		\$8,000.00
Improvements assessed at .....		\$4,000.00
Moss Manfg. Co. to G. B. Hall, 5/7/21, Deed conveying Lot 19 in Block 13 Oklahoma City for consideration of .....	\$7,000.00	
Lots assessed at .....		\$2,000.00
Improvements at .....		\$2,000.00
E. M. Spencer to Grant Stanley, 6/28/20, Deed conveying Lots 39 & 40 in Blk. 16 Oklahoma City for consideration of .....	\$12,000.00	
Lots assessed at .....		\$6,000.00
Improvements at .....		\$3,300.00

Bertha H. Jonte to David B. Troeper, 9/20/20, Deed conveying Lots 8 & 9 in Blk. 41 Oklahoma City for consideration of .....	\$7,000.00	
Lots assessed at .....		\$5,000.00
Improvements .....		500.00
377		
December 13, 1920, Deed to E. R. Butler et al. for S. E. ¼ of Section 19 Twp. 11 N. R. 4 West of the I. M. for consideration of .....	\$18,000.00	
Land assessed at .....		\$7,200.00
Improvements assessed at .....		\$1,000.00
Nov. 20, 1920, Deed to Alfred C. Holm for N. W. ¼ of Sec. 1 Tp. 12 N. 4 W. con- sideration of .....	\$9,600.00	
Land assessed at .....		\$7,000.00
Improvements at .....		\$100.00
Feb. 9th, 1920, Deed to M. M. Vabderwork for S. W. ¼ of Sec. 5 Tp. 12 N. R. 4 W. I. M. for consideration .....	\$16,500.00	
Land assessed at .....		\$5,000.00
Improvements .....		\$500.00
July 30th 1920, Deed to Robert J. Jones for N. W. ¼ of Sec. 7 tp. 12 N. R. 2 West consideration of .....	\$17,000.00	
Land assessed at .....		\$4,000.00
Improvements .....		.....

*List of Properties Conveyed Within the Last Two Years.—Continued.*

Jan. 15th 1920, Deed to O. C. Bundy for N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ & S. E. of S. W. $\frac{1}{4}$ of Section 25 in Twp. 12 North Range 2 West consideration	\$6,000.00
Land assessed at	\$1,500.00
Improvements	\$500.00
Nov. 24th 1920, Deed to J. T. Covert et al. for E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 34 in Twp. 11 N. Range 3 West consideration of	\$12,500.00
Land assessed at	\$4,400.00
Improvements	\$500.00
Jan. 7th 1921, Deed to W. E. Watters for W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 25 in Twp. 11 North Range 3 West of the I. M. for consideration	\$8,000.00
Land assessed at	\$2,800.00
Improvements	\$600.00
April 16th 1921, Deed to Elmer G. Prall for lots 1, 2 and 3 in Blk. 12 Classen's Marquette Addition for consideration of	\$5,700.00
Assessed value of	\$2,925.00
J. C. F. Sprankle to Peter M. Holmes, Deed dated 9/3/20 conveying N. E. $\frac{1}{4}$ of Sec. 14, and E. S. $\frac{1}{4}$ of Sec. 11 all Tp. 14 N. 4 W. consideration	\$26,000.00
Land assessed at	\$13,250.00

Harvey L. Griffin to A. J. Roe 4/1/1920, Deed conveying N. E. 1/4 of Sec. 12 Twp. 14 North Range 4 West of the I. M. for con. ....	\$10,000.00	
Land assessed at .....		\$3,200.00
Improvements at .....		\$300.00
James M. Young to John C. Ryan, Deed dated 9/14/20 conveying S. W. 1/4 of Sec. 25, Twp. 14 N. Range 4 West consideration .....	\$9,000.00	
Land assessed at .....		\$3,200.00
Improvements .....		\$100.00
James M. Johnston to William P. Serbousek, Deed dated 5/14/20 conveying S. W. 1/4 of Section 27 Tp. 14 N. R. 4 West consideration of .....	\$7,000.00	
Land assessed at .....		\$3,500.00
Improvements .....		\$200.00
378		
F. W. Carson to Jessie F. Young, Deed dated 6/2/1920 conveying all N. E. 1/4 of Sec. 7 and N. W. 1/4 of Sec 8 Twp. 13 North Range 4 West I. M. consideration of ....	\$14,000.00	
and assessed at .....		\$6,600.00
Improvements .....		\$700.00
Geo. R. Brown to Harry L. Bailly, Deed dated 3/8/1920 conveying N. 1/2 of N. W. 1/4 of Section 20 in Twp. 13. N. Range 4 West of the I. M. ....	\$3,700.00	
Land assessed at .....		\$2,000.00
Improvements .....		\$600.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

Fred W. Fleming to Don S. Strong, Deed dated 6/25/20 conveying S. E. 1/4 of Section 35 in Twp. 13 N. 4 W. consideration .....	\$7,300.00	
Land assessed at .....		\$4,000.00
Improvements .....		\$200.00
Sales since Jan. 1, 1920.		
379		
E. 50 ft. of Lots 1-2-3 Blk. 15 Winans Highland Terrace consid. ....	\$16,000.00	
Lots assessed at .....		\$1,625.00
Improvements .....		6,000.00
Lot 12 in Blk. 16 same Add. consideration .....	\$8,500.00	
Lots assessed at .....		1,400.00
Improvements .....		3,500.00
W. 40 ft. of Lot 3 & E. 20 ft. of 4 Blk. 22 same addition Consideration .....	\$20,000.00	
Lots assessed at .....		2,125.00
Improvements assessed at .....		7,000.00
All of Lot 11 & W. 20 ft. of 12 B. 22 Consideration .....	\$3,500.00	
Lots assessed at .....		2,800.00
Lots 21 and 22 in Blk. 12 Mil. Park Add. Consideration .....	\$7,500.00	
Assessed value of Lots .....		1,000.00
Improvements assessed at .....		4,000.00

Lots 1 & 2 Block 2 B. 13 Mil. Park Consideration			
Lots assessed at			\$4,800.00
Improvements assessed at			550.00
			940.00
Lots 33 & 34 Blk. 16 Mil. Park Add. consideration			
Lots assessed at			\$6,500.00
Improvements			500.00
			\$3,000.00
Lots 27 & 28 Blk. 17, Mil. Park consideration			
Lots assessed at			\$7,500.00
Improvements assessed at			740.00
			\$2,600.00
Lots 1 & 2 Blk. 19 Mil. Park Add. consideration			
Lots assessed at			\$8,500.00
Improvements at			\$1,500.00
			2,400.00
Lots 16 & 17 Blk. 19 Mil. Park Consideration			
Lots assessed at			\$6,500.00
Improvements at			1,000.00
			3,800.00
Lots 11 & 12 Blk. 20 Mil. Park Add. Consideration			
Lots assessed at			\$6,500.00
Improvements assessed			650.00
			\$1,800.00
Lots 21 & 22 Blk. 21 Mil. Park Consideration			
Lots assessed at			\$600.00
			480.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

Lots 5 & 6 in Blk. 22 Mil. Park Add. Consideration .....	\$11,200.00	
Lots assessed at .....		480.00
Improvements .....		\$3,800.00
Lots 1 & 2 Blk. 22 in Mil. Park Add. ....	\$8,500.00	
Assessed value of Lots .....		\$540.00
Improvements .....		\$3,000.00
— 1 & 2 in Blk. 26 in Mil. Park. Consideration .....	\$7,500.00	
Lots assessed at .....		\$25.00
Improvements assessed at .....		\$3,200.00
— 9 & 30 Blk. 29 Mil. Park. Consideration .....	\$7,000.00	
Lots assessed at .....		400.00
Improvements at .....		\$2,200.00
— & 6 in Blk. 13 Oak Park add. Consideration .....	\$5,750.00	
Lots assessed at .....		1,500.00
Improv. at .....		1,700.00
380		
N. 50 ft. of S. 134 ft. of Lots 1 & 2 Blk. B. Oak Park. consideration of .....	\$3,500.00	
Lots assessed at .....		400.00
Improvements assessed at .....		1,500.00

Lots 21 & 22 Blk. 8 in Main St. Add. consideration .....	\$9,500.00	
Lots assessed at .....		2,000.00
Improvements .....		3,000.00
 Lots 9 & 10 Blk. B. Oak Park consideration .....	\$5,100.00	
Lots assessed at .....		1,500.00
Improvements assessed at .....		1,200.00
 All of Lot 7 & W. 9.62 ft. of Lot 6 Block "D" in Oak Park Add consideration .....	\$4,500.00	
Lots assessed at .....		945.00
Improvements assessed at .....		\$1,300.00
 Lots 27 & 28 Blk. 16 Main St. Addition. Consideration .....	\$3,000.00	
Value of lots as assessed .....		1,600.00
Improvements assessed at .....		500.00
 Lots 37 & 38 Blk. 10 Gaulds Add. Consideration .....	\$10,500.00	
Lots assessed at .....		1,800.00
Improvements assessed at .....		2,000.00
 Lots 29 & 30-31-32 Blk. 4 Owen & Welsh Add. consideration .....	\$9,000.00	
Lots assessed at .....		4,200.00
Improvements assessed at .....		1,400.00

*List of Properties Conveyed Within the Last Two Years.—Continued.*

All of N. 50 ft. of Lots 1 & 2 Blk. 8 North West add. consideration .....	4,000.00	
Lots assessed at .....		1,350.00
Improvements .....		4,000.00
 Lots 1 & 2 Blk. 6 North West Add. consideration .....	2,100.00	
Lots assessed at .....		1,350.00
 Lots 1-2-3-4 Blk. 10 North West Add. consideration of .....	\$7,000.00	
Lots assessed at .....		1,700.00
Improvements assessed at .....		8,200.00
 Lots 13 & 14 in Blk. 11 N. West Add. consideration .....	4,000.00	
Lots assessed at .....		1,150.00
Improvements .....		2,500.00

Endorsed: Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

381 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit of D. A. Richardson in Rebuttal.*

D. A. Richardson on his oath states that the sheet hereto attached, marked "Exhibit A" and made a part hereof is a true and correct copy of a portion of the testimony of W. E. Grimes, auditor of the Corporation Commission of Oklahoma, given by said W. E. Grimes upon a hearing of the application of the Okmulgee Gas Company before the Corporation Commission of Oklahoma on December 20, 1921. Affiant further states that he was present at said hearing, and personally heard the said W. E. Grimes give said testimony, and further that affiant has compared "Exhibit A" hereto attached with the official transcript of the testimony of said Grimes as made by said Corporation Commission of Oklahoma, and that Exhibit A hereto is a true and correct copy of said official transcript.

D. A. RICHARDSON.

Subscribed and sworn to before me this 23rd day of February, 1922.

[SEAL.]

EMMA SEBERGER,  
Notary Public.

My commission expires Jan. 12, 1925.

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EXHIBIT A.

Q. Did I understand you to say that in July 1921, the Commission adopted 10% as the standard of leakage?

A. Yes sir.

Q. Could you produce a copy of that order?

A. There was no order.

Q. You say no order was made?

A. No sir there wasn't.

Q. Do you know whether or not any hearing was held on the matter of adopting that standard of leakage in July, 1921?

A. No sir.

Q. Do you know whether or not the Okmulgee Gas Company was given notice to appear or to show any cause why a standard of 10% on the leakage should not be adopted?

A. They were not.

Q. How then did the Commission adopt 10% as the standard of the leakage in July, 1921?

A. It had been the practice of the Commission to adopt a certain amount for leakage in each particular instance, and in order to arrive at a uniform practice, as I understand it, after a full and complete investigation this 10% was decided upon.

Q. What do you mean by a full and complete investigation—I thought you said they didn't have any investigation?

A. They satisfied themselves, but I don't think they went outside and invited the public to come in and help them.

Q. Prior to July had the Commission made any specific order about leakage?

A. Not in general but they had in specific cases.

Q. When the Commission approved 10% for leakage, did they increase the gas rate of any of the Gas Companies to enable them to correct their leakages and bring it up to 10%?

A. I don't know they made any particular increases to provide funds for that particular purpose.

Endorsed: Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

383 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit of R. C. Sharp in Rebuttal.*

R. C. Sharp on his oath states that he is Vice President of the Oklahoma Natural Gas Company, and has been active in the management of its affairs since the year 1917, and that he makes this affidavit in rebuttal of certain statements and averments contained in defendants' answer herein and in affidavits filed by the defendants.

Touching the averment in defendants' answer that, as respects complainant's ownership and use of gas leases and gas wells, complainant is a private corporation and not a public utility, affiant says that its gas leases and gas wells are not only used and useful by complainant in performing its public service of furnishing natural gas to the public, but also that the same are necessary and indispensable. Complainant's pipe lines, compressor stations and distributing systems would be worthless, both to the complainant and to the public, without a supply of natural gas to put through them. The thing with which the public has been served and is being served is natural gas, not pipe lines, compressor stations, or distributing lines; and gas leases and gas wells are as necessary in furnishing gas to

384 the public as are the pipe lines and compressor stations. Complainant's gas leases and gas wells are as much dedicated

and devoted to the public service as are the pipe lines and compressor stations. They are analogous to the generating plant of an artificial gas company or of an electric company; and they are treated and held by all courts and commissions, and have always been treated by the Corporation Commission of Oklahoma, as property of the natural gas utility used and useful in performing its public service. If complainant's gas leases and gas wells are private property, not dedicated and devoted to the public use, then it would be competent for complainant to divert its gas to private uses, and refuse to furnish the same to the public, and the public would be without a remedy.

Affiant admits that the leakage in complainant's distributing plants equals twenty per cent of the gas delivered into them, and that the leakage in its transmission systems equals fifteen per cent of the total volume of gas supplied through them. Affiant says, however, that such amount of leakage is not abnormal, and is no more than the average leakage in natural gas transmission and distribution systems all over the United States. Affiant further states that the averment in defendants' answer that the Corporation Commission of Oklahoma has never in any cause recognized or allowed a leakage in excess of ten per cent is not true. On the contrary, said Commission, prior to the making of Order No. 1886 herein complained of, had not only regarded a leakage of twenty per cent in distributing plants as not undue or unreasonable, but had expressly allowed the same. In Cause No. 2693 before the Corporation Commission of Oklahoma, Order No. 1225, to which the defendants refer in one of their affidavits, the Corporation Commission of Oklahoma said:

385 "An element of the cost of gas as to which there was some dispute was the shrinkage to be allowed. The testimony of witnesses showed that shrinkage in Oklahoma cities had amounted to anywhere from fifteen to thirty-five per cent. Witness for the city testified that in his observations in Ohio and elsewhere the shrinkage ought not to be more than twelve per cent. The Kansas Commission and the Federal Court in Kansas allowed from twenty to thirty per cent (see *Landon vs. Lawrence*, P. U. R. 1915 E., 763). Paragraph 5 of the syllabus of this case reads as follows:

"In fixing the amount to be allowed to cover leakage and waste of natural gas through a distributing system, thirty per cent of the gas delivered was allowed in the case of distributing companies marketing annually 10,000 M cubic feet of gas or less. Twenty-five per cent in case of companies marketing annually more than 10,000 M cubic feet and not exceeding 20,000 M cubic feet, and twenty per cent in case of companies marketing annually more than 20,000 M cubic feet, such percentages being an average annual allowance requiring an annual adjustment.'"

The Commission further said:

"The Commission finds that an allowance of twenty per cent should be made for shrinkage in the Tulsa plant."

And it was not until the Commission made Order No. 1886 herein complained of that it ever provided for a leakage of only ten per cent; and it made the said allowance of only ten per cent for leakage without having given the complainant any previous notice of its intention so to do, and without making any provision for an earning for complainant with which to bring its plant to the said standard.

Since the year 1917 and until the year 1921, complainant has paid a dividend of only 8 per cent per annum out of its gas earnings upon its issued capital stock, which has been less than 8 per cent per annum upon the value of its property used and useful in furnishing gas to the public. After paying such dividend, complainant devoted the remainder of its earnings each year, which were comparatively inconsequential, to the upkeep of its property; and the same was not sufficient to enable complainant to bring its property to a standard of leakage less than that theretofore allowed by the Commission.

Another element which enters into the question of leakage is the pressure which complainant is required to carry on its 386 lines. Complainant's transmission lines are hundreds of miles in length, and in order to transmit the gas through the same, it is necessary that complainant have and use large compressors and pumps, which force the gas through the transmission lines at high pressure, ranging from 250 to 300 pounds per square inch, and the leakage is always proportioned to the pressure.

In addition to that, the Corporation Commission of Oklahoma made an order requiring the complainant to maintain a pressure of not less than four ounces in all parts of its distributing systems, and provided that if complainant's pressure in any distributing system was only three ounces, it could collect only three-fourths of the bills of its consumers incurred during said time, and only one-half of the bills where the pressure was two ounces, and only one-fourth of the bills where the pressure was one ounce, and no part of the bills where the pressure was under one ounce. And said Commission has twice made orders requiring this complainant to rebate and discount its bills because of low pressure, notwithstanding the evidence in said cases showed that complainant was furnishing all the gas it had and could get during said times, and notwithstanding the evidence before said Commission further showed that cooking operations could be successfully carried on with gas at one-fourth of one ounce pressure, and that a pressure of two ounces was adequate and sufficient for all cooking and heating purposes; and the pressure at which said Commission has required complainant to furnish gas in distributing systems has caused the leakage to be much greater than it would otherwise be in said distributing systems, and has caused complainant to carry a much higher line pressure in its transmission systems, and has caused the leakage in said transmission systems to be greater than it would otherwise be.

387 This affiant further states that it is not true that the rates prescribed in said Order No. 1886 would render to complainant a reasonable return, even if its transmission and distributing systems were absolutely tight, and if there were no leakage therein whatsoever, a condition which no gas plant has ever been able to

attain; and by mere calculation, eliminating the said leakage from consideration, assuming that it did not exist, assuming that complainant was required to obtain that much less gas, from the business done by complainant during the calendar year 1920, and from November 1, 1920, to October 31, 1921, and also from the business done by complainant during the calendar year 1921, it can easily be seen that rates prescribed in Order No. 1886 would be confiscatory even though there were no leakage.

The circumstances under which the Corporation Commission of Oklahoma fixed the 48 cent rate, and the circumstances under which said rate was terminated, were and are as follows:

The said rate of 48 cents per thousand was fixed by the Corporation Commission to enable complainant to raise the price of a portion of the gas which it was purchasing in the field from six to ten cents per thousand, and also in consideration of some additional investment which it was necessary that complainant make in order to utilize that gas. Said order was made upon the recommendation of the Oklahoma City Gas Investigating Committee, and it was provided in the order that inasmuch as the Commission was about to conduct a general hearing upon the Oklahoma Natural Gas Company's rates, and relative to the installation of a city gate rate, the said 48 cent rate should be in effect from April 15, 1920, to October 1, 1920, and until the further order of the Commission. The said city gate rate case was instituted before the Corporation Commission, and the 388 towns and cities prayed and obtained numerous continuances, which rendered the Commission unable to decide said cause by October 1, 1920. In consideration of obtaining those continuances, several of said cities and towns specifically agreed before said Corporation Commission that said 48 cent rate should remain in force until the final determination of said cause. The Commission therefore continued said 48 cent rate in force indefinitely and beyond October 1, 1920. On October 1, 1920, the complainant was required to and did increase the price which it paid for gas in the field to each and every producer from whom it purchased gas to the said ten cents per thousand which it was theretofore paying only to the Creek County Gas Company. On December 20, 1920, the said Corporation Commission made an order fixing the rates for gas at 58 cents per thousand for the first 100,000 cubic feet, 50 cents per thousand for the next 400,000 cubic feet, and 40 cents per thousand for all in excess of 500,000 cubic feet. In said order said Commission referred to the evidence which had been given in said cause as to the value of complainant's property, and stated that it stood in the record undisputed. The Commission further said:

"The Commission is not at this time prepared to express an opinion as to the fair reasonable value of the property now used and useful in serving the patrons of the Oklahoma Natural Gas Company, but it is clearly apparent that if the company is not to be deprived of the value of certain of its properties by failing to receive compensation therefor during the time when such property is being used to aid in rendering service, and if future customers are not to be un-

justly burdened by payment of return on property no longer of material service to them, then there must be provided a fund sufficient to take care of line extensions, compressor stations, and such other expenditures as are from time to time necessary in maintaining the best possible standard of current service."

Further on the Commission said:

389 "In its efforts to reach new fields and to secure additional supplies of gas the evidence shown that the company has expended approximately \$1,500,000.00 annually for the last four years. Evidence shows that a large portion of these expenditures has gone into capital account, although largely incurred in order to enable the company to continue serving patrons already attached to the system; this by reason of the fact that the receipts of the company were insufficient to cover these expenditures and leave the necessary funds for the payment of dividends upon the investment. The evidence shows that the extensions and additions thus made in an effort to maintain service has added approximately 50 per cent to the company's capital account, making the payment of dividends more difficult and new capital relatively harder to secure. As the supply of gas from existing fields is exhausted rapidly, the company that is unable to make extensions to new fields must inevitably fail to supply gas in any measure approximating the need of its patrons. A reasonable return for the money invested in the property used and useful in supplying the needs of the public cannot be denied if continuation of the service is to be desired, nor can the service be continued except the funds be available to make extensions to new supplies of gas when available, and to provide pump stations to force through the lines low pressure gas that cannot be delivered otherwise. It is clearly apparent from the evidence in this case that the present rates applied to the available supply of gas will not produce sufficient funds to meet the various items of expense referred to above, each of which must be met, if the available supply of gas is not to decline and the service deteriorate to a point where it will be utterly unsatisfactory and wholly inadequate."

It was provided by the Commission in the order above mentioned that the rates therein fixed should be temporary, until the Supreme Court of Oklahoma had passed upon the question whether the Commission could lawfully install a city gate rate; and it was provided that said order fixing said 58 cent rate should be in effect from January 1, 1921, until March 1, 1921, or until otherwise ordered by the Commission.

Prior to the making of said order, to-wit on January 6, 1920, the Supreme Court of Oklahoma, in the case of Muskogee Gas & Electric Company vs. State, 186 Pacific 730, held that the rate-making power of the Corporation Commission is not limited to any particular theory or method, and that the Commission might, if it had the necessary facts before it, prescribe a temporary schedule of rates to be effective until the Commission had had time to make an investigation and valuation of the property of the public utility.

Nevertheless, in the case of *City of Oklahoma City vs. The Corporation Commission*, 195 Pac. 498, the Supreme Court of  
390 Oklahoma granted a writ of prohibition against the Corporation Commission, prohibiting it from enforcing its said Order No. 1829 so made on December 20, 1920, and prohibiting the Oklahoma Natural Gas Company from putting into effect the said rates therein prescribed, on the ground, first, that the Corporation Commission had made said rates without a valuation, although said court had previously held and did subsequently hold in other cases that the said Commission could fix a temporary schedule of rates without a valuation; second, that the Oklahoma Natural Gas Company bore no relation to the towns and cities in which it did not own the distributing plant but where it only furnished gas to local distributing companies to be distributed; but instead of holding the said rate so prescribed to be invalid only as to such towns, it also held it to be invalid as to all of the towns in which the Oklahoma Natural did own the distributing plants; and third, that the Commission had no power to prescribe a rate or to grant an increase in rates for the purpose of giving the Oklahoma Natural Gas Company an earning for amortizing its pipe lines during the period of time they were in use. The said 58 cent rate having thus been held void, thereafter, on the 14th day of June, 1921, in the case of *City of Bartlesville vs. Corporation Commission*, 199 Pac. 396, the Supreme Court of Oklahoma again held that the Corporation Commission had power to fix temporary rates without a valuation.

After the Supreme Court of Oklahoma had held the Commission's order No. 1829, putting into effect the 58 cent rate, to be void, the Commission permitted the 48 cent rate to continue until April 1, 1921, and then, on or about said April 1, 1921, without notice to the complainant it directed from the bench that the said 48 cent rate  
391 April 1, 1920, should again become effective. Complainant and its attorneys protested against the abrogation of said 48 cent rate and the putting into effect of said 40 cent rate, but the Commission overruled said protest. The said 48 cent rate did not lapse by virtue of its terms, but by virtue of an order made by the Corporation Commission soon after it had found that this complainant was entitled to a 58 cent rate, and three months before the Commission made Order No. 1886 herein complained of, in which Order No. 1886 the said Corporation Commission found that the city gate rate for each and every thousand cubic feet of gas which the Oklahoma Natural delivered into each and every distributing system, whether for domestic or industrial purposes, based upon depreciated original cost of its property, and allowing only 8 per cent for return and 8 per cent for depreciation and amortization, ought to be 35.2 cents per thousand, notwithstanding which, said order fixed a city gate rate of only 25 cents per thousand for domestic gas and 20 cents per thousand for industrial gas.

As to the averment in defendants' answer that by June 25, 1921, almost a year after the institution of said proceeding before said Corporation Commission, said Commission was unable to separate the

purely privately owned property of complainant from its property used and useful in the public service, affiant presumes that by the expression "purely privately owned property" said averment refers to complainant's gas leases and gas wells, mentioned in an earlier portion of said answer. Touching said matter, said Corporation Commission in its said order stated that it was considering and valuing only the property of complainant "used and useful in producing and transporting the gas." It further said: "As to the gas which the

Oklahoma Natural produces itself, the cost of production, including labor, drilling, casing and gathering lines, has more than doubled since said percentage contracts were entered into." In every rate case which every natural gas company has had before the Corporation Commission, its gas wells and gas leases have been considered.

Furthermore, the engineers and accountants of the Corporation Commission at all times have had full access to all of complainant's books, vouchers and records; and they spent months of time in complainant's office examining the same prior to and during the hearing in said cause, and reported that they had completed the same, and appeared before the Corporation Commission and testified in regard to the same. Moreover, in said order said Commission did pass upon and determine the value of complainant's property used and useful in serving the public.

This affiant states that it is not true, as averred in defendants' answer, that said rates so fixed by said Corporation Commission, based upon the data before said Commission, or based upon any experience which said Commission had had, were sufficient to produce to complainant an adequate return for amortization, depreciation and net earnings, based upon the city gate rate principle. On the contrary, affiant states that the very least city gate rate which the data before said Commission suggested in any aspect, as said Commission stated in its order, which rate was based upon depreciated original cost, denying complainant the benefit of any appreciation in values, and which was based on a return of only eight per cent for interest or dividends and only eight per cent for amortization and depreciation, was 35.2 cents per thousand for all the gas delivered into every distributing system, including both domestic and industrial gas; but notwithstanding that fact, and the Commission's finding of that fact, it nevertheless fixed the city gate at 25 cents per thousand for

domestic gas and 20 cents per thousand for industrial gas.

Touching the averment in defendants' answer that the Corporation Commission's supplemental orders of July 15, 1921, modifying the rates fixed in said order No. 1886 with respect to certain of the smaller towns served by complainant were made with complainant's consent, affiant says that in said order No. 1886 the rates in some of said smaller towns were fixed at 50 and 55 cents per M cubic feet for the first 500,000 cubic feet, and 25 cents per M for all gas used in excess of that quantity. There was practically no industrial consumption in said smaller towns except in a few where there were cotton gins which operated during the fall and a portion of the winter months. The Corporation Commission of Oklahoma

represented to affiant that it had received complaints from those small industries to the effect that the amount of industrial gas which they used was so small that it would practically all take the domestic rate, and that therefore the said industries were unable to use the gas, and that said industries had requested that another break be fixed in the rate in order that they might burn gas for industrial purposes. Said Commission also informed affiant that it thought that it would be to complainant's advantage to sell industrial gas to those users, and that the complaint of said industrial users was well taken, and that a hearing should be had thereon unless complainant would permit said Commission to modify said order as to those small towns without a hearing. Complainant recognized that the small industrial users could not burn gas at the 50 and 55 cent rate, and it therefore offered no objection to the Corporation Commission making an order enabling industrial users to pay the 50 and 55 cents a thousand for the first 100,000 cubic feet and the 40 cents a thousand for the next 400,000 thousand cubic feet, and 25 cents a thousand for all over; and in so far as the industrial users are concerned, this complainant is not complaining of said industrial rates at this time. The source of complainant's complaint at that time and now was and is the city gate rate which was fixed and the domestic rates which were fixed in each of said towns and cities.

With respect to complainant's appeal from the order of said Corporation Commission to the Supreme Court of Oklahoma, this affiant states that upon the making of said order and the fixing of said city gate rate at 25 cents and 20 cents per thousand respectively, and the fixing of the domestic rates, this affiant stated to complainant's attorneys that said rates were so wholly and grossly inadequate that complainant could not live under them, and that complainant would have to appeal therefrom. At that time the Oklahoma Gas & Electric Company, to which complainant furnished gas for distribution in Muskogee, Enid, Oklahoma City and El Reno, gave notice to the Corporation Commission of its intention to appeal to the Supreme Court of Oklahoma from said order of said Corporation Commission because the same abrogated the purported divisional contracts existing between complainant and said Oklahoma Gas & Electric Company and fixed a city gate rate; and said Oklahoma Gas & Electric Company prayed and took its said appeal from the order of said Corporation Commission and requested that the evidence in said cause be transcribed and certified by said Commission and be filed in said Supreme Court; and the attorneys for complainant stated to this affiant that complainant, upon the completion of said transcript and certification of said evidence, could take a cross appeal upon said transcript, without having a separate transcript made. The reporters of said Corporation Commission were then transcribing said evidence for said appeal of said Oklahoma Gas & Electric Company. About the last of September or the first of October, 1921, this affiant gave complainant's attorneys directions to appeal from said order of said Corporation Commission with respect to the rates therein fixed, and was informed by

said attorneys that a cross appeal would be taken as soon as the evidence was transcribed and certified for said Oklahoma Gas & Electric Company. Shortly after the said evidence was so transcribed, the Oklahoma Gas & Electric Company dismissed its said appeal, and thereupon this complainant immediately filed, not a cross appeal, but its own appeal in said cause, and paid for and used the transcript which had been prepared by the Commission.

With respect to that portion of defendant's answer in which it is stated that the rates provided in said Order No. 1886 were based upon the demand for gas as experienced in preceding years, and that, if complainant has not been able to sell as much gas as in preceding years, the Commission is willing to entertain another application for a readjustment of rates, this affiant states that said Commission's order itself showed that the rates fixed by the Commission were confiscatory even under the finding of the Commission itself and upon the amount of gas which the Commission found had been sold during the previous year. This affiant further says that it was in evidence before the Commission that the complainant had never earned a reasonable return during any year since the Commission had been fixing its rates, and the Commission found that the complainant was required each year to put more into the property in order to furnish a constantly diminishing supply of gas than it was getting out. In addition to that, it was proved before said Commission, and said Commission expressly found, that the quantity of gas which

this complainant was able to sell was diminishing each year. 396 Said Commission expressly found that in the year 1917 complainant sold 29 billion cubic feet of gas and that there had been a steady reduction of the amount which it had been able to sell each year, so that in the year 1920 it had sold only 20 billion cubic feet; and said Commission knew that during the years 1918, 1919 and the first half of 1920, the price of oil and coal, competitive fuels, was the highest ever known in Oklahoma, and that said prices were abnormal, and themselves caused a larger demand for gas than there would otherwise have been. Said Commission further knew when it made order No. 1886 that said abnormal prices for coal and oil had declined, and that from October 1, 1920, to the time the Commission made said order complainant's industrial consumption had been practically eliminated; so that it was in evidence before the Commission that the amount of gas which complainant could sell was diminishing each year and that complainant could not hope to sell during the succeeding year the amount of gas it had sold during the preceding year.

Moreover, before this case was filed in this court two members of the Corporation Commission stated to this affiant that if complainant should file another application before the Commission for an increase in rates, each and every town and city affected would insist upon having a hearing in that particular town and city, and that the Commission could not hear such an application and make an order in it in less time than ten months; and said statement on the part of said Commissioners was and is true in fact.

Furthermore, it was in evidence, and said Corporation Commis-

sion knew on June 25, 1921, when it made Order No. 1886 that complainant's sales of gas had been diminished during the latter part of 1920 and during the entire period of 1921, up until the time the Commission made said order; and this affiant informed the Commission before it made said order that during the year 1921 complainant could not and would not sell in excess of 15 billion cubic feet of gas for all purposes, and the fact is that during the calendar year 1921 complainant's sales of gas for all purposes were 14,044,728 M cubic feet.

It was in evidence before said Commission, and said Commission knew when it made said Order No. 1886, that complainant's industrial sales of gas had been practically eliminated from the month of October, 1920, until June 25, 1921, when the Commission made said order.

Moreover, in said Order No. 1886, the Commission found the value of complainant's property used and useful in rendering its public service, including its production, transmission and distributing properties, to be \$18,522,751.40. Of this, the Commission found the value of the production and transmission property to be \$16,496,150.46, and it found the total value of all complainant's distributing properties to be \$2,026,600.94. In defendants' answer it is asserted that a return of 8 per cent for interest or dividend and an additional 8 per cent for amortization and depreciation is adequate for the production and transmission property, and the Commission purported in its Order No. 1886 to allow a return of only 8 per cent for interest or dividend and 5 per cent for depreciation on complainant's distribution property. This affiant states that the values found by said Commission were and are less than the actual value of complainant's said property, and that the said per cent of return for interest or dividend and for depreciation and amortization, considering the character and nature of the business, its hazards, uncertainties and risks, the instability and short life of the business, is grossly inadequate, unreasonable and confiscatory of complainant's property. But applying even the said rates of return so suggested in said Commission's Order No. 1886 and in defendants' answer to the values found by said Commission, we should have the following results:

Taking eight per cent for return or dividend and eight per cent for depreciation and amortization upon the value of the production and transmission property as found by the Corporation Commission, we should have 16 per cent of \$16,496,150.46, which equals \$2,639,384.07 for interest or return and for depreciation and amortization; and taking eight per cent for interest or dividend and five per cent for amortization and depreciation upon the values found by the Commission of the distributing properties, we should have 13 per cent of \$2,026,600.94 for interest or dividend and depreciation and amortization, which amounts to \$263,458.12. In other words, according to the Commission's own findings of values and its own statements as to the amount of return which complainant should have for interest or dividend and to take care of its depreciation and amortization, the complainant was entitled to earn over and above

its expenses during the year 1920 the sum of \$2,902,842.19 for interest or dividend and for depreciation and amortization. The amount of money which the complainant actually earned during the year 1920 over and above its necessary operating expenses, was \$1,460,748.02; and that fact was in evidence before the Commission at the time it made its said Order No. 1886; and during the year 1920 complainant was required to spend enormous sums in building new lines to new gas fields in order to have something like an adequacy of supply; so that it is a fact, and is apparent that the Commission did not fix rates that were adequate and compensatory even upon the basis of the data before the Commission and upon the basis of complainant's previous experience.

399 Moreover, complainant's said return during the year 1920 of \$1,460,748.02 was made under conditions much more favorable to complainant than those existing when the Commission made Order No. 1886 herein complained of, in this to-wit: during most of the year 1920 this complainant was paying only six cents per thousand for the gas which it purchased, and from April 15, 1920, and during the remainder of the year, complainant was receiving in all the towns and cities in which it owned the franchise, 48 cents per thousand for gas. Three-fourths of the gas which complainant itself distributes in towns and cities served by it is distributed in the city of Tulsa, so that during the most of the year 1920 complainant was receiving 48 cents per thousand for all the domestic gas which it distributed, as against the rate of 42 cents per thousand fixed by the Corporation Commission for gas in Tulsa under its Order No. 1886, which gas sold in Tulsa was three-fourths of the gas which complainant itself distributed. In addition to that, under the divisional contracts existing between complainant and the independent distributing companies which it served, complainant received two-thirds of the collections made by said local independent distributing companies, that is to say complainant received two-thirds of 48 cents during the most of the year 1920, or 32 cents per thousand for the gas furnished said local distributing companies, leaving out of consideration leakage, as against 25 cents per thousand fixed by said Corporation Commission in its Order No. 1886. In other words, during most of the year 1920, complainant was paying less for gas than during the year 1921, and was receiving more for it, and yet its net return during that year was only about half of what the Commission in its answer and order stated the complainant should earn.

Touching that portion of defendants' answer in which it is stated that large elements of complainant's property have become  
400 useless for public service purposes by reason of the exhaustion of gas fields to which complainant had built its lines, affiant says that the inventory and appraisal of complainant's property by H. E. Musson, appraisal engineer employed by complainant to make said appraisal, comprised only property of complainant which was used and useful in rendering complainant's public service and the same did not include any property which had become useless; and the said H. E. Musson testified before said Commission that his said

inventory included only property used and useful by complainant in rendering its said public service. The inventory and appraisal made by the Corporation Commission's engineer, M. E. Durham, as said Durham testified before said Commission, included only property used and useful by complainant in rendering its said public service; and said Durham testified that if he had put in all of the proper labor items upon the 55 miles of complainant's 12" and 16" pipe line from Cement to the Walters field, and had placed in his inventory and appraisal the proper provisions for intangibles and overheads, there would have been very slight, if any difference between his appraisal and that of Mr. Musson.

Affiant further says that complainant's books and records have at all times been open to the inspection of the Corporation Commission, and that the Corporation Commission had and kept a corps of engineers, auditors and accountants who might examine both the properties themselves and the books and records of complainant for the purpose of determining what was used and useful in rendering complainant's public service.

Affiant further states that complainant's application was filed on August 5, 1920; but the Corporation Commission of Oklahoma knew long prior to that date that said application would be filed, 401 and it put its engineers, auditors and accountants to inventorying and appraising complainant's property many months before that date, and the hearing on said cause ran from August 5, 1920, to June 25, 1921.

Affiant further states that the exhaustion of a gas field does not always render useless the pipe lines in said field. For instance, formerly the Oklahoma Natural Gas Company obtained natural gas out of what was known as the Glenn Pool Field. Its main pipe line running from Tulsa to Oklahoma City passed through said Glenn Pool field. That field has been exhausted for some years, but the pipe line which passed through said field is still used and useful in transporting gas between Tulsa and Oklahoma City. The gathering lines in said field, upon the exhaustion of the field, were taken up and used in other gas fields. As another example, the Oklahoma Natural Gas Company built a pipe line from Oklahoma City southwest to what was known as the Cement gas field 57 miles from Oklahoma City. That field has become exhausted; but, the said pipe line did not thereby become worthless; but on the contrary the Oklahoma Natural Gas Company extended the said line still farther southwest into what is known as the Walters and Duncan fields, a distance of 50 miles south of Cement.

In addition to that, complainant has many transmission lines and gathering lines running from its main lines into gas fields which originally produced large quantities of gas, but the production in which fields has fallen off to where the same is inadequate to supply that proportion of complainant's needs for gas which it formerly supplied, but yet the amount of production in said fields is still too large to justify complainant in removing its lines. For example, the complainant built a pipe line into the Morrison gas field, which line cost

\$825,000.00. At the time complainant built said line into said field there was an open flow volume of 90 million cubic feet of gas per day developed in said field. Today the open flow volume in said field is approximately only 13 million cubic feet of gas per day. This reduction in the volume of gas obtainable in the Morrison field necessitated the building of new lines to other fields; but to render efficient service complainant cannot forego the 13 million cubic feet of gas still obtainable in said field, and therefore cannot remove its pipe line in said field, although it has removed a branch of said line and relaid it into what is known as the Hoffman field. The same condition is true in the Cushing field and in many other fields. Should plaintiff abandon those fields that are now making small quantities of gas, complainant's supply of gas would be wholly and totally inadequate.

In addition to that when a portion of pipe line is removed, as was done in the Morrison field, and as has been done between Tulsa and Claremore, that pipe is relaid to other fields, and in relaying the pipe, complainant is faced with the necessity of acquiring new rights of way, of spending money in taking up the pipe, of transporting it to new fields, and of digging its ditches and laying the pipe in said new fields. The necessity for using all the gas available has prevented complainant from laying lines to new fields merely by the removal of old lines, and has necessitated the constant purchase and laying of lines out of new pipe altogether. In all cases where complainant's own leases have been exhausted they have been charged off, and in all cases where a pipe line has been removed, it was charged off, and when the same was relaid the investment was put back. These facts have been shown to the Corporation Commission of Oklahoma in hearing after hearing, and were and are well known to said Commission.

This affiant states that it is not true that included in the valuation of complainant's property are many millions of dollars paid for large acreage of leases in wildcat and undeveloped territory; on the contrary, Durham's inventory and appraisal contains only \$451,415.42 for unoperated leases; and Musson's inventory and appraisal on the original cost basis includes only \$437,828.64 for unoperated leases.

As to the history of the Oklahoma Natural Gas Company, it was organized on October 9, 1906, with a capital stock of \$3,000,000.00. On March 11, 1907, the capital stock was increased to \$4,000,000.00. Affiant was not connected with the Oklahoma Natural Gas Company at that time, but he has been informed and believes that at the time the capital stock was increased to \$4,000,000.00, \$2,000,000.00 in cash was paid into said company, and that producing gas leases having an open flow volume in excess of one billion cubic feet and worth much more than \$2,000,000.00 were assigned to the company.

On July 6, 1917, the Oklahoma Natural Gas Company merged with several other gas companies hereafter named, and the capital stock was increased to \$10,000,000.00. On May 31, 1919, the capital stock was increased to \$14,300,000.00. The constituent companies,

the merger of which in 1917 made what is now the Oklahoma Natural Gas Company, were as follows:

Oklahoma Natural Gas Company, organized October 9, 1906, capital stock \$4,000,000.00.

Caney River Gas Company, organized May 24, 1906, capital stock \$1,000,000.00. The property of this company was appraised when it was merged with the Oklahoma Natural Gas Company. It had over 100 miles of 8" main pipe line, costing \$904,136.46. It owned four compressor stations, one located at Bixby, one at Haskell, one at Braden and one at Wallace Station, which compressor stations had cost over \$200,000.00. It owned the natural gas distributing plant in the town of Coweta and in the town of Haskell. It owned 404 four warehouses with the stock therein. It furnished gas for distribution in the city of Muskogee. It had numerous very valuable producing gas leases. Its property, including accounts receivable, which the Oklahoma Natural acquired in said merger, were appraised by disinterested persons at said time at the sum of \$2,917,547.99.

The Osage & Oklahoma Company, which was organized on March 16, 1905, with a capital stock of \$1,500,000.00, also went into said merger. The Osage & Oklahoma Company owned the distributing systems in Tulsa, Dawson, Turley and Red Fork. It owned pipe lines of the following lengths and sizes: 17 miles of 12 inch; 114 miles of 8 inch; 9 miles of 6 $\frac{5}{8}$  inch; 50 miles of 6 inch; 31 miles of 4 inch; 20 miles of 3 inch; and 17 miles of 2 inch. It owned warehouses and the stock therein. It owned numerous very valuable gas leases, including 107,000 acres in one body in the Osage Nation. Its property was appraised by two disinterested competent gas men, neither of whom were stockholders of the company, at the sum of \$2,318,362.86. It had no indebtedness whatsoever, and had accounts receivable amounting to \$202,252.31.

The Oklahoma Fuel Supply Company, organized February 15, 1910, with a capital stock of \$250,000.00, also went into said merger. It had no indebtedness and its property was appraised at the sum of \$534,506.58. It owned the distributing plants in Claremore, Ramona, Inola, Porter, Wagoner, and numerous other distributing plants.

United Fuel Supply Company, organized June 19, 1911, with a capital stock of \$500,000.00, also went into said merger. On January 19, 1916 this company became what was known as the Enid Natural Gas Company. This company owned the main pipe line running from the Blackwell field to the city of Enid, and the distributing plants in Nardin, Lamont, Hunter, Pond Creek 405 and Peckham. The property of this company was appraised at \$413,341.20.

Peoples Fuel Supply Company, organized on August 21, 1912, with a capital stock of \$100,000.00, also went into said merger. This company owned pipe lines and producing gas leases, which were appraised at the sum of \$254,725.41.

Before said merger was made the matter was laid before the Governor of Oklahoma, the Attorney General of Oklahoma, and the

Corporation Commission of Oklahoma, and the consent of said three departments of the state government to said merger was obtained. The properties of all the other constituent companies were acquired by the Oklahoma Natural Gas Company in said merger, and stock of the Oklahoma Natural Gas Company was paid for said properties. Properties of each of said corporations were appraised by Mr. John Pew, of Pittsburgh, Pa., then President of the Hope Natural Gas Company, the largest natural gas company in the United States, and by Mr. Harry Reeser, of Pittsburgh, Pa., Assistant to the President of the Ohio Fuel Supply Company, and connected with many other gas companies. Neither of these gentlemen owned a dollar's worth of stock either in the Oklahoma Natural Gas Company or in any of the companies which were merged with the Oklahoma Natural Gas Company. Both of them were competent practical natural gas men, experienced in the operation of natural gas properties and in the determination of the values of such properties. They were among the best known natural gas men in the United States. They determined the price at which the Oklahoma Natural should take over the properties of the other constituent companies.

In taking over the properties above named, the Oklahoma Natural Gas Company increased its capital stock to \$10,000,000.00, and of said increase at said time it sold \$1,356,000.00 worth of said stock at par for cash, and the remainder of said increase of stock was paid for by said properties so taken over.

406 On May 31, 1919, the capital stock of the Oklahoma Natural Gas Company was further increased in order to get money to pay for new pipe lines which had been built to new gas fields and to pay for new pipe lines which were to be built to new gas fields. At that time the authorized capital was increased to \$15,000,000.00. \$3,000,000.00 of said authorized increase was issued and sold for cash at par, making a total capital stock of \$13,000,000.00. In addition to that the Oklahoma Natural Gas Company issued a stock dividend of 10 per cent amounting to \$1,300,000.00, making the issued capital stock \$14,300,000.00. The Oklahoma Natural could not have raised \$3,000,000.00 in any other manner. It undertook to sell bonds in order to raise said new money, but it was wholly unable to do so.

As to dividends which have been paid by the Oklahoma Natural Gas Company and all the constituent companies, the following are the facts:

From October 9, 1906, the date of the organization of the Oklahoma Natural Gas Company proper, to December 1910, a period of four years, no dividend of any kind or character was paid by the Oklahoma Natural Gas Company, all the earnings of the company being put into the property.

In December 1910 the Oklahoma Natural Gas Company paid a dividend of one per cent on its capital stock of \$4,000,000.00.

During the year 1911 the Oklahoma Natural Gas Company paid a dividend of three per cent on its capital stock of \$4,000,000.00.

In 1912 it paid a dividend of four per cent on its capital stock of \$4,000,000.00.

In each of the years 1913, 1914, 1915 and 1916, the Oklahoma Natural Gas Company paid a dividend of five per cent upon its capital stock of \$4,000,000.00.

407 The Caney River Gas Company, organized on May 24, 1906, with a capital stock of \$1,000,000.00, paid no dividend of any kind or character from the date of its organization until the year 1912, a period of six years, all the earnings of the company being put into the property. In the year 1912 it paid a dividend of six per cent. In 1913 it paid a dividend of eight per cent. In 1914 it paid a dividend of eight per cent. In 1915 it paid a dividend of nine per cent. In 1916 it paid a dividend of ten per cent.

The Osage & Oklahoma Company, organized on March 16, 1905, with a capital stock of \$1,500,000.00, paid no dividends of any kind or character from the date of its organization until the year 1911, a period of six years, all the earnings of the company being put back into the property. In the year 1911 it paid a dividend of only one-half of one per cent. In 1912 it paid a dividend of three per cent. In 1913 it paid a dividend of four per cent. In 1914 it paid a dividend of five per cent. In 1915 it paid a dividend of  $7\frac{1}{2}$  per cent. In 1916 it paid a dividend of nine per cent.

The Oklahoma Fuel Supply Company, organized on February 15, 1910, with a capital stock of \$250,000.00, paid during the year 1910 a dividend of  $1\frac{1}{2}$  per cent. In 1911 it paid a dividend of nine per cent. In 1912 it paid a dividend of eight per cent. In 1913 it paid a dividend of  $7\frac{1}{2}$  per cent. In 1914 it paid a dividend of eight per cent; in 1915, eight per cent and in 1916, six per cent.

The United Fuel Supply Company, organized in June, 1911, with a capital stock of \$500,000.00, paid no dividend during the year 1911. During the year 1912 it paid a dividend of  $1\frac{1}{2}$  per cent. In 1913 it paid a dividend of eight per cent. In 1914 it paid a dividend of eight per cent. In 1915 it paid a dividend of

408 four per cent. It was converted into what was known as the Enid Natural Gas Company on January 19, 1916, and during the year 1916 it paid a dividend of six per cent.

The Peoples Fuel Supply Company, organized on August 21, 1912, with a capital stock of \$100,000.00, paid no dividend from 1912 until the year 1917, a period of five years, and in the year 1917, before the merger, it paid a dividend of 30 per cent which would equal 6 per cent per annum during the time.

Since the merger, and until 1921, the Oklahoma Natural Gas Company has paid a dividend upon its natural gas business of only eight per cent upon its issued capital stock. In 1919 it paid a dividend of two per cent from its oil and gasoline business, and in 1920 it paid a dividend of two per cent from its oil and gasoline business, and in January, 1921, it paid a dividend of one-half of one per cent from its oil and gasoline business. In 1921 it discontinued the payment of dividends altogether.

The total dividends which the Oklahoma Natural Gas Company and all the constituent companies have paid altogether from their very earliest organization down to the present time upon their whole business, including the gas business, the oil business and the gaso-

line business, have been \$6,933,416.70. Of this amount \$579,000.00 were dividends that were paid in 1919, 1920 and 1921 from oil and gasoline earnings, and those dividends from oil and gasoline earnings were as follows: In the year 1919, \$221,500.00; in the year 1920, \$286,000.00; in the year 1921, \$71,500.00, making a total of dividends paid from earnings other than the public service of \$579,000.00, and leaving dividends paid on the property devoted to public use of only \$6,354,416.70, or only \$800,075.69 more than the new money which the Oklahoma Natural Gas Company has been required to invest in the last four years in order to procure and furnish an adequate quantity of gas to its consumers.

Of the \$6,933,416.70 so paid as dividends of all the constituent companies from the date of their earliest organization down to the present time, including both natural gas, and oil and gasoline, \$4,740,916.70 thereof has been paid since and including the year 1917, and the same includes all dividends on both natural gas and oil and gasoline, leaving only the sum of \$2,192,500.00 paid as dividends from the organization of the companies *paid as dividends from the organization of the companies* in 1905 and 1906 up to the year 1917, or a period of ten years. With respect to the \$4,740,916.70 which has been paid as dividends since and including the year 1917 on both natural gas and oil and gasoline, during said same period of time, as shown by the affidavits filed herein, and as the evidence before said Corporation Commission showed, and as said Commission found, complainant has been required to put \$5,554,341.01 of new money into its property, not for the purpose of increasing the amount or volume of its business, but merely for the purpose of continuing to do business at all, the same being \$813,424.35 more than the dividends received during that time. Inasmuch as complainant's business is an unstable business, and is surely and certainly coming to an end, complainant's stockholders and directors naturally inquire when and how, under the rates allowed them, they may expect to get their capital back.

Affiant observes that in the bill in this case, and in one of the affidavits which he has made, it is stated that the Oklahoma Natural Gas Company's net earnings for the year 1917, after deducting its usual and ordinary expenses, were only \$78,767.58. Affiant has ascertained from a further examination of the records that this is an error, and that the \$78,767.58 was the earning of the

410 Oklahoma Natural Gas Company for one portion of the year only, and that the earnings of neither of the constituent companies which were merged with the Oklahoma Natural Gas Company in 1917, were put in. The total net earnings of the Oklahoma Natural Gas Company and all its constituent companies for the year 1917 were \$720,116.70. The averment in the complainant's bill and the statement in the former affidavit made by this affiant and filed herein that during the years 1917, 1918, 1919 and 1920, complainant's net earnings were \$4,108,484.45 is hereby corrected and said net earnings during said period of time were in fact \$4,750,197.57. During said period of time the amount of new

money which complainant was required to expend in building new lines to new gas fields in order to continue to sell a constantly diminishing supply of gas, exceeded complainant's net income during said period by the sum of \$804,143.44 instead of the sum of \$1,445,491.56 as stated in said bill and in this affiant's former affidavit.

The complainant's earnings, over and above the dividends which it has paid, have been negligible, and they have been used at all times to keep complainant's property in as good repair as it was possible to do. Practically complainant's sole source of money with which to build the new lines to new fields has complainant's stockholders, complainant being unable to issue long time bonds, and complainant being able to borrow money only by the personal endorsement and guarantee of its directors and stockholders; and it has been necessary, in order for complainant to get the new money from its stockholders, that complainant pay dividends.

The oil and gasoline properties and business of the Oklahoma Natural Gas Company have been kept separate from its  
411 natural gas properties and business since and including the year 1919, and none of the expenses chargeable to the oil or gasoline properties or oil and gasoline operations have been charged to the natural gas properties or operations. Prior to the year 1919, the same were not kept separate, but the public service part of complainant's business had the benefit of all the earnings in the oil and gasoline business and the dividends paid prior to 1919 constituted the joint earnings from both the public service business and the oil business and the gasoline business. In every rate hearing which the Oklahoma Natural Gas Company has had before the Corporation Commission of Oklahoma, including the hearing resulting in Order No. 1886, both the natural gas business of the Oklahoma Natural Gas Company and its oil and gasoline business have been gone into thoroughly before the Corporation Commission, and evidence was submitted showing the investment in the public service properties and the investment in the oil and gasoline properties, and the evidence in said matters, including all data, facts and figures, have always been fully and completely disclosed to said Corporation Commission. In addition to that, the books and records of the Oklahoma Natural Gas Company have always been open to the Corporation Commission of Oklahoma, its auditors, accountants and engineers for inspection and examination. The Oklahoma Natural Gas Company has never charged the expense of any well drilled for oil, whether the same was a producing well or a dry hole, to the public service business. Its oil business ever since and including the year 1919 has been kept in a separate department and has been kept as separate, both in investment and in operations, as if it were owned and operated by a different corporation altogether. Nevertheless, in all of these rate hearings, the question of the Oklahoma Natural Gas  
412 Company's investment in oil and gasoline properties, its expenses and income from said properties, has always been gone into by the Commission, and has been fully shown and disclosed. The Oklahoma Natural Gas Company has only drilled for oil

in territory thought to be productive of oil, and when it so drilled it charged the expense thereof to the oil department. It has drilled for gas only in territory believed to be gas territory, and when it has so drilled it has charged the expense thereof to gas operations, but if, in drilling for oil, the Oklahoma Natural Gas Company should find gas which was available to its pipe lines, then the well would be turned to the gas department and that department would be charged with the cost of the well. On the other hand, if in drilling for gas the Oklahoma Natural Gas Company found oil, then the well would be turned to the oil department and the expense of the well would be charged to that department. In the hearing of this cause before the Corporation Commission, the amount of the investment in oil and gasoline property, the expense in those departments and the net earnings therein, were all shown, and the complainant offered in said hearing to treat the income from said oil and gasoline properties just as though it were income from the public service part of its business, provided its investment in said oil and gasoline properties and its expenses therein were also so treated.

As to complainant's lease in the Osage Nation, and the averment that complainant has prospected for oil thereon, the facts are that that lease is a lease executed by the Osage Nation and the Secretary of the Interior, and does not convey to the Oklahoma Natural Gas Company the oil rights at all, but only the gas rights. Other people have leases upon the same acreage executed by the Osage Nation and the Secretary of the Interior covering the oil rights, and a specific provision of complainant's lease and of the leases executed to  
413 the oil leases is that, if the complainant in drilling for gas should find oil, then the complainant shall turn the well over to the oil lessees, who shall be required to reimburse the complainant for the cost of the well; and on the other hand, if the oil lessees in drilling for oil should find gas in worthwhile quantities, then the oil lessees are required to turn the gas well over to the complainant and the complainant is required to reimburse the oil lessees for the cost of the well. Copies of this lease have been filed with the Corporation Commission of Oklahoma; these features have been gone into time after time before the Commission, not only in rate hearings, but also in hearings which the Commission has conducted with respect to the adequacy of complainant's supply of gas; and the Corporation Commission of Oklahoma at the time it filed its answer herein was fully and thoroughly conversant with the said terms of said lease and knew that the complainant had no oil right in said lease, and nothing to gain by drilling for oil in the Osage Nation.

Affiant states that it is true that a portion of the stock of the Oklahoma Natural Gas Company was issued in payment for leases in which is known as the Hog Shooter Field; but the complainant received also numerous other leases besides those located in the Hog-shooter Field. The leases located in the Hog Shooter Field at that time had a developed open flow production of natural gas in excess of a billion cubic feet; and complainant operated said property and sold said gas, and the proceeds therefrom went into complainant's business and into the construction of pipe lines and the develop-

ment of other fields. At about the same time there was a large amount of gas developed near Mounds, Oklahoma, which complainant used for its pipe lines.

Complainant's Hog Shooter leases were charged off many years ago, and have never entered into complainant's inventories  
414 and appraisals in any rate hearing which has been had before the Corporation Commission.

Touching that portion of defendant's answer in which it refers to an order of the Corporation Commission made on April 19, 1918, fixing rates for complainant, and in which it is stated that complainant never indicated any dissatisfaction with the rates fixed, this affiant states that the said averment in said answer is not true. The Order made by the Commission on June 1, 1918, and referred to in said answer, was a temporary order only, to be in effect only until the completion of the valuation of complainant's property, and the putting into effect of a permanent rate. On September 18, 1918, the Commission made what purported to be its permanent order. Complainant was at that time engaged in building a new 12 inch pipe line from Oklahoma City to Cement Field southwest of Oklahoma City, a distance of fifty-seven miles, which pipe line, together with other lines built by complainant to other fields, cost complainant more than a million and a half dollars. In said order dated September 18, 1918, the Corporation Commission of Oklahoma said:

"It is further ordered that when the Oklahoma Natural Gas Company shall have built a main pipe line into a southern field and shall have secured a supply of natural gas adequate for its patrons, that upon the completion of this line and connection thereof with its present system, the rates shall automatically be increased to a maximum of forty cents net per M cubic feet and a minimum of twenty-five cents net per M cubic feet."

This line was completed in January, 1919, and the gas in the Cement Field was connected with it. Thereupon the Oklahoma Natural Gas Company requested the Commission to install the forty cent rate provided in said order. On January 31st, 1919, the Commission ordered that complainant should not install the forty cent  
415 rate but that the Commission should have a hearing thereon before the same was done. Accordingly, complainant rendered to said Commission an itemized statement of the additions and improvements which it had made during said year, a true and correct copy of which said report is hereto attached, marked Exhibit "A" and made a part hereof.

On April 18th, 1919, the Commission made an order, denying complainant the right to put into effect the forty cent rate authorized by the Commission upon the completion of said line and the connections of gas with it, a true and correct copy of which said order is hereto attached, marked Exhibit "B" and made a part hereof; so that complainant was deprived of a return upon its investment of more than a million and a half dollars of new money; and it was not until September, 1919, a year after the order in which complainant

was promised the 40 cent rate, that the Commission finally installed the forty cent rate promised in its order of September, 1918; and before said order was installed complainant had extended its pipe line from Cement to Walters, a distance of fifty-five miles, and a large portion of that line being sixteen inch line, had made an additional investment, counting said extension, of a million and a half dollars of new money. This made a total of additional investment during the years of 1918 and 1919 of more than three million dollars.

As to the averment in defendant's answer that during the year 1917 complainant sold about twelve billion cubic feet of gas to other public utilities, this defendant states that it is true that during the year of 1917 complainant sold and delivered some gas to the Kansas Natural Gas Company. The entire proceeds of all the gas sold by complainant to every person and corporation for every purpose went into complainant's earnings as a public utility, and were credited upon its books as earnings of the public utility, and the same were so accounted for.

416 All sales of gas made by complainant to any and all persons and corporations have been at all times accounted for to the Corporation Commission of Oklahoma, and have been credited upon the books of the company as receipts from complainant's earnings as a public utility. Since the year 1918 complainant has sold no gas to other pipe line companies. It has sold and does now sell gas to persons and corporations engaged in the gas and oil fields in drilling wells for oil and gas purposes; but the same is done by complainant as a public utility, and the receipts of said gas are accounted for to the Corporation Commission of Oklahoma and go to make a part of the earnings of the public utility.

It is true, as alleged in defendant's answer, that during the year 1921, the price of fuel oil and coal has been such that complainant considering the increased cost of producing and furnishing gas and the immense distances complainant is now required to transport the same, could not sell gas for industrial purposes in competition with coal and fuel oil. This affiant states, however, that during 1918 and 1919 and the first part of 1920 the price of oil and coal themselves were abnormal, crude oil bringing as much as \$3.85 per barrel in Oklahoma and fuel oil selling in Oklahoma at 2.25 per barrel, and the price of coal running from \$7.00 to \$16.00 per ton. During said times complainant's inability to procure and keep an adequate supply of gas rendered it unable to sell such quantities of gas as the price of oil and coal gave complainant a demand for. Now, however, fuel oil can be purchased in Oklahoma for 75 cents per barrel, and the price of coal has also gone down, so that it is cheaper for industries to use oil and coal for fuel than it is to use gas for fuel at any price for which complainant can sell same, considering the cost of the gas to complainant and the cost of transporting and delivering the same. Also the cost of coal and fuel oil are more

417 nearly normal now than they were in 1918 and 1919, but are still above normal, and there is no reason to believe that the price of either will advance, but on the contrary there is

reason to believe the price of each will further decline, as the price of each is still much higher than it was during the pre-war period.

Furthermore, for complainant to sell more industrial gas is merely to deplete its supply that much more quickly, and either to terminate and end complainant's business that much earlier, or else to require complainant to make that much more quickly another enormous new investment in new pipe line to new gas fields, provided the same can be found.

Touching that portion of defendant's answer in which it is stated that this complainant's operations under said order No. 1886 has been during abnormal periods of weather, this affiant says that ordinarily the weather in Oklahoma even in the winter time is fairly mild, and that extremely cold weather is itself unusual and abnormal, and when the same exists it is usually and ordinarily for very short periods of time; this affiant says that the winter of 1920 and the winter of 1921, while there have been no extreme cold periods in them, in affiant's opinion, are, nevertheless, fairly representative, and that the same have not been abnormal. That complainant's financial conditions is not due to abnormal weather during 1921 is shown by the result of complainant's operations during the year 1920 under rates even higher than those fixed in Order No. 1886 and when complainant was purchasing gas more cheaply than it can now obtain it. Moreover, complainant has sold as much gas for purely domestic purposes in 1921 as it sold in 1920.

Touching that portion of defendant's answer in which it is stated that the Corporation Commission of Oklahoma has never attempted to require the complainant to extend its pipe lines to new  
418 fields, this affiant says that while the Corporation Commission of Oklahoma has never made an order expressly requiring complainant to build new pipe lines to new fields, nevertheless, the Corporation Commission of Oklahoma has required complainant so to do by other means. Thus in the Commission's order of April 18th, 1919, made after the complainant had built its pipe line from Oklahoma City to Cement in which said order the Corporation Commission of Oklahoma refused to permit the complainant to put into effect the forty cent rate which had been promised complainant upon building its line to that field and connecting the gas to it, the Corporation Commission of Oklahoma said:

"The records of this Commission show that large areas in the southern part of Oklahoma have been tested and proved for gas and that many wells are in existence; that they have great capacity, and the Commission is of the opinion that the company, for the protection of its present investment and for the accommodation of its patrons, should seek to take advantage of the gas supply existing in the fields along the Texas border; any of which fields could be more aptly designated as a southern field than the Cement Field."

The Commission in said order further said:

"The company has a large investment which it ought to protect, and as new fields are discovered they ought to be reached."

The Commission further said in said order:

"The Commission is of the opinion that the sources in the eastern and central part of the state, from which the company has heretofore drawn its supply, cannot be depended upon for any length of time, and that its patrons will be without gas in a short while unless other fields are reached, and the Commission is of the opinion that the lines should be extended to these fields;

And the Commission refused the complainant the forty cent rate which it had promised, notwithstanding the complainant showed that it then had connected an adequate supply of gas, until the complainant should expend an additional million and a half dollars building a new line to the Walters Field.

Furthermore, in the winter of 1917-1918, notwithstanding complainant had put forth every effort to get and supply all of  
419 the gas its patrons needed, had spent large sums of money in drilling gas wells of its own and had purchased all of the gas available to its pipe lines, nevertheless, there was a shortage of natural gas, and during a portion of the winter complainant was unable to furnish all the gas which its patrons demanded at the high pressures which they desired. Certain persons filed complaints before the Corporation Commission against the Oklahoma Natural Gas Company, praying the Commission to fine the Company for not furnishing an adequate quantity of gas. Upon the conclusion of the hearing thereon the Corporation Commission made an order in which it reviewed the situation, and found that the Oklahoma Natural Gas Company was furnishing all the gas it could get, and had exercised care and diligence in undertaking to provide for and furnish an adequate supply. It said:

"Thus viewing the situation in the light of the facts as they are and laying aside all bias naturally arising on account of unsatisfactory service, the justice of the situation impels the conclusion that the charge of negligence in this respect is unfounded and unreasonable."

Nevertheless, the Commission held in that order in substance that the Oklahoma Natural Gas Company was engaged in rendering a service, and that it was not a question of care or diligence on the one hand or negligence on the other, and it make an order to the effect that a four ounce pressure in every part of the distributing systems should be considered as normal, and that for all gas furnished at a pressure of four ounces or over complainant might collect the entire bill; that for all gas furnished at a pressure below four ounces and not less than three ounces complainant might collect only three-fourths of its bill; that for all gas furnished at less than three ounces and not less than two ounces complainant might collect only one-half of its bill; that for all gas furnished at less than two ounces and not less than one ounce complainant might collect  
420 one-fourth of its bill; and that for all gas furnished at less than one ounce the complainant could make no charge whatsoever. This case was appealed to the Supreme Court of

Oklahoma, which affirmed the same, and it is now pending in the Supreme Court of the United States.

In the following winter, complainant again did not have sufficient gas and there was a shortage. The Corporation Commission had a hearing upon the matter. The complainant proved, and it was not disputed, that it had conducted an extensive drilling campaign for gas during the preceding summer, and that it was then and had been purchasing all the gas which it could acquire from anybody anywhere available to its lines, and that it had built new lines to new fields. It further proved by Engineers of the United States Bureau of Mines and by other competent gas people that more satisfactory service could be rendered with gas at two ounces pressure, if only the appliance for burning it were properly adjusted, than could be rendered at a four ounce pressure; and a gas conservation agent of the United States Bureau of Mines made a demonstration before the Corporation Commission, carrying on cooking operations with one-tenth of one ounce gas pressure. Notwithstanding that fact and all the evidence introduced, the Corporation Commission again made an order requiring this complainant to rebate and discount its gas bills in the same manner as had been done the year before. That case is now pending on appeal in the Supreme Court of Oklahoma, and has not been determined.

This complainant, realizing that if those orders are finally affirmed and the discounts and rebates should be required to be made on all its systems, they would operate to confiscate its property and deprive it of any opportunity for a reasonable return on its investment, was compelled by said order also to build new lines to new gas fields; notwithstanding the fact that it is held by legal authorities than

421 when one goes into business as a public service in the furnishing of a commodity which only nature makes, and the supply of which is limited, he dedicates to the public only the supply thereof which he has and is not liable for failure of supply, and is under no legal obligations to build new pipe lines to new sources of supply. In addition to that, on July 19th, 1920, the Chairman of the Corporation Commission of Oklahoma wrote the complainant a letter, in which he stated that if the complainant permitted a shortage of gas to result the following winter the Commission intended to put the complainant into the hands of a receiver.

With respect to complainant's oil operations, this affiant states that the value of complainant's property invested in its oil business is the sum of \$525,024.25; and the value of complainant's property invested in the gasoline business is the sum of \$323,410.13.

During the year 1920, complainant's net income from its operations of oil was \$6,644.10. However, in addition to that, during that year the complainant sold an oil lease for \$225,000.00. For the first eleven months of the year 1921 complainant's net earnings from its oil was \$6,065.71. During the year 1920 complainant's net earnings from its gasoline business was \$48,985.65. During the first eleven months of 1921 complainant suffered a deficit in the operation of its gasoline plants of \$6,234.19.

With respect to the period of time during which complainant will

continue in the natural gas business, this affiant says that about eighty per cent of the gas available to it now is situated in what is known as the Duncan Field; that said field was opened up as a gas field only about eighteen months ago; that complainant has  
422 connected with fifty-three wells in said field, of which eighteen have already failed utterly and have been abandoned and disconnected. Affiant further states that of the thirty-five remaining, a great many are now threatened to be ruined by water; that by far the largest number of said wells were connected with complainant's lines during the latter part of the year 1921, and that the open flow volume of said wells has already decreased from in excess of 900,000,000 cubic feet to about 459,000,000 cubic feet, or about fifty per cent; and that the rock pressure of said wells has also decreased about one-third. The Corporation Commission of Oklahoma in December 1921 made a survey of said Duncan Field; and the official report of J. W. Duvall, Gas Engineer for the Corporation Commission, with respect to said field was made to said Corporation Commission, copy of which is hereto attached, marked "Exhibit C" and made a part hereof.

Affiant further states that about the first of December, 1921, complainant connected with twelve large gas wells in what is known as the Morris Gas Field, which wells were producing from twelve to fifteen million cubic feet per day each, and which wells had a rock pressure of 660 pounds. On January 19th, 1922, about six weeks later, five of those wells were dead, and the open flow volume of the other seven wells has already decreased to less than one-half of the original open flow volume of said wells, and the rock pressure in said wells has declined from six hundred and sixty to two hundred and thirty pounds. Affiant further states that about ninety days ago complainant connected with six large gas wells in what is known as the East Bristow Field, having an open flow volume running from fifteen to twenty million cubic feet each per day, and having a rock  
423 pressure in excess of six hundred pounds. Four of those wells are already practically dead, and the open flow volume in the other two has been cut to less than one-half and the rock pressure has gone down to where the wells will barely feed into the line.

Touching the averment contained in said defendant's answer relating to the percentage of return which complainant should be permitted to earn, this affiant says, that in the Corporation Commission's said order No. 1886 it was purported to give complainant a return of eight per cent for interest or dividend and five per cent for depreciation upon complainant's distributing systems. The Commission did not state what per cent of return it purported to allow for complainant's production and transmission property, though it is stated in defendant's answer that eight per cent for interest or dividend and eight per cent for amortization and depreciation is sufficient.

In the Commission's order a distinction is drawn between complainant's production and transmission property on the one hand, and its distribution property on the other, in that, when the gas is

exhausted complainant's production and transmission property will become valueless except for what it will bring as junk, whereas, it was stated that distribution property might be used for distributing artificial gas. The City of Tulsa and possibly the City of Sapulpa are the only cities in which complainant owns the franchise which are large enough to support an artificial gas plant, and it has no artificial gas franchise even in these towns; and the distributing system in all the other towns served directly by complainant would become as worthless upon the exhaustion of the supply of natural gas as would the production and transmission property.

This affiant further states that eight per cent for return and five per cent for depreciation is the per cent of return ordinarily allowed

424 by the Corporation Commission of Oklahoma and by all Commissions the country over as a proper rate for stable utilities, such as electric light plants and water plants, to the period of whose operation nature has fixed no limit, and which utilities, when their plants have been constructed, can operate with fair uniformity upon the investment made, without relative hazard and without the necessity of continually pyramiding their capital investment. If such utilities increase their capital, it is ordinarily for the purpose of increasing the volume of their business and the amount of money they can make. Whereas, with respect to the Oklahoma Natural Gas Company, its business is unstable, it is constantly being required to pyramid its investment, its supply of gas is constantly being depleted, while it does a continually dwindling business. The instability, insecurity and hazard of the business entitles a company such as the Oklahoma Natural Gas Company to a larger return than is given to stable utilities.

Affiant further states that the Oklahoma Natural Gas Company has had no opportunity to buy any gas since October, 1920, at less than ten cents per thousand, except the gas from one well which contained forty-one per cent nitrogen and had a B. t. u. content of 642, as against a normal B. t. u. content of about 1,000. Complainant has had to pay as high as fifteen cents per thousand for gas on its Enid line; and it has lost some gas for which it was paying ten cents because of other parties bidding eleven and one-half cents for it.

With respect to the Osage and Oklahoma Company, which was merged into the Oklahoma Natural Gas Company, and with particular reference to the affidavit of W. E. Grimes respecting the application of that company for an increase of rates in Tulsa in 425 March, 1917, and the testimony given in said hearing, and the order made by said Commission in said cause, this affiant

says: That the application for an increase in rates in the City of Tulsa at said time was based upon the additional cost of gas to the Osage and Oklahoma Company, and in said cause said Osage and Oklahoma Company treated the valuation of its property as of practically no importance, and did not endeavor to prove what the real and actual value of the property was. In the order made by the Corporation Commission, the Commission stated:

"The application is based chiefly on the additional cost of gas produced by the Osage & Oklahoma Company in the Osage Nation, dut to royalty required by lease of March 17, 1916."

The Commission also further said:

"Although the record is long, the case has not been tried along the lines ordinarily followed in developing a rate case, and many factors which the Commission usually takes into consideration in passing upon the adequacy of rates have not been mentioned in the testimony."

As showing the real grounds for the application, the Commission said:

"The evidence shows that heretofore Tulsa has enjoyed comparatively very low rates for natural gas; that the Osage & Oklahoma Company, which of late years has been supplying the city of Tulsa, has been securing its gas from acreage in the Osage Nation within a few miles of the city of Tulsa, and that it has been required to pay a rental of only \$100 per well per year. Thus the Osage & Oklahoma Company has had access to a practically free source of supply of natural gas, and the city has had the benefit thereof. Conditions have changed. On the 17th day of March, 1916, the Osage & Oklahoma Company, in order to retain control of its acreage in the Osage Nation was required thereafter to pay a royalty of 3 cents per thousand cubic feet for all gas taken from the field; to expend the sum of \$35,000 per year in the operation and development of its lease, and to pay for a minimum of 10,000,000 cubic feet per day whether this amount be produced or not. The matter of payment of the minimum in the sum stated is qualified, and has not yet been finally adjudicated by the Interior Department, but for the present this minimum, which amounts to the sum of \$109,500 per year, must be paid."

Further on in this order the Commission said:

426 "As heretofore pointed out, this case has not been tried along the lines customary in the ordinary rate case, and many elements which are sometimes given weight by commission cannot be given serious consideration herein. It has been tactically agreed, and the evidence shows, that some increase in rates should be allowed. Only the physical valuation of the properties of the applicant seem to have been considered in introducing the testimony."

The Commission then adverted to the fact that nothing had been claimed for going concern value, for cost of establishing the business, for working capital, or for other overheads or intangibles.

Then, going to the value of the physical property alone, the Commission said in said order:

"The cost to reproduce the physical property new, as given by the company, is \$840,822.16. This figure also is not disputed in the record."

Further on the Commission said:

"The accountants for the Commission, after taking into consideration advance in prices of material and in the cost of labor, and after making allowance for depreciation, have fixed the present fair value of the property of the city of Tulsa at \$386,897.73, and of the Osage pipe line at \$137,061, total \$523,959.07. This takes no account of franchise rights, going-concern value, working capital, acreage, wells and equipment."

In other words, the Commission found that there was no dispute but that the then reproduction cost of the pipe line of the Osage & Oklahoma Company, including that in the City of Tulsa and in the Osage pipe line, exclusive of franchise rights, going concern value, working capital, all other overheads and intangibles, and exclusive of gas acreage, gas wells and all equipment, was \$840,822.16.

In that same case the Corporation Commission of Oklahoma held that the annual expenditure which a natural gas utility is required to make in developing its leases, including the drilling of new wells, must be taken into consideration in a rate valuation; and that investment in producing natural gas wells is a proper capital account.

With respect to the complainant's production expense mentioned in the affidavit of W. E. Grimes, this affiant says:

First, complainant's production expense, as was explained to the Corporation Commission of Oklahoma in said hearing, did not and does not all relate merely to the drilling and equipping of gas wells. On the contrary, according to complainant's system of book-keeping heretofore in effect, only complainant's main pipe lines have been treated as transmission lines, and the other lines running from gas fields and gas wells to complainant's main pipe lines have been treated as production lines, and the expense of the maintenance of said lines and of the operation of same were charged to the production account. For example, complainant has a main pipe line running from Tulsa to Oklahoma City. In 1917 it built a line from the Morrison gas field intersecting complainant's main pipe line at Wellston. This line was 52 miles long, and 42 miles of it was 12" pipe and 10 miles of it was 10" pipe, and the line cost \$826,000.00. That line has never been treated on complainant's books as a transmission line, but as a production line running from the gas field to complainant's transmission line, and all the taxes on that line, the cost of operating it and maintaining it, the cost of the gathering lines running from that line to the wells, and the taking them up and removing them from one well to another, all went into the production expense and not into the transmission expense.

The same thing is true of the south 50 miles of the line running from Oklahoma City to the Walters field, 33 miles of which is 16" pipe and 20 miles of which is 12". These facts were fully explained to the Corporation Commission in said hearing.

428 In addition to the foregoing, complainant's production expense includes the expense of obtaining gas leases, the land rentas and well royalties, the expense of drilling wells, the expense of operating the wells, the expense of repairing the wells and repairs to the production lines.

Assuming that the defendants' statement is correct that complainant has an average leakage in its production, transmission and distribution systems aggregating 35 per cent, which is about the average the United States over, then in order that complainant might sell 20 billion cubic feet of gas in the year 1920, it was necessary that complainant produce and purchase together at least 27 billion cubic feet. Complainant produced about 7 billion cubic feet of gas during said year at an average expense, counting the operation and maintenance of the production lines as hereinbefore explained, but which really should be charged to transmission expense, of about 18 cents per thousand. Oil and gas producers estimate that considering the present cost of drilling and casing, and the short life of the wells, it costs from 15 to 20 cents per thousand to produce natural gas; and complainant is enabled to buy the gas for 10 cents per thousand only because of the great amount of drilling that is done in the State of Oklahoma for oil purposes in which the oil operators find gas instead of oil, and who sell it to complainant at 10 cents per thousand rather than suffer the entire loss of the cost of drilling the well.

Not all of the 7 billion cubic feet of gas above mentioned however is in fact leakage. Complainant has and operates eight compressor stations, all of which are operated with natural gas and which require for their operation in excess of a billion cubic feet of gas annually. This billion cubic feet of gas, while in fact  
429 not leakage, but properly a part of the operating expenses of the Oklahoma Natural Gas Company, is nevertheless not charged to operating expenses, but is included in the leakage.

With respect to the defendants' complaint as to the amount of drilling which the Oklahoma Natural Gas Company did in 1920, this affiant states that the complainant was forced to do so by the Corporation Commission of Oklahoma, first, by the orders made by said Commission requiring the complainant to rebate or discount its bills when the quantity of gas available for its customers in the winter was not adequate to meet their demands. Second, during said year of 1920 the Corporation Commission of Oklahoma called this affiant before it on numerous occasions, and inquired of this affiant what the Oklahoma Natural Gas Company was doing in an effort to procure an adequate quantity of gas for the following winter; and said Commission directed this affiant to see to it that the Oklahoma Natural Gas Company put on an intensive drilling campaign for the purpose of procuring an adequate quantity of gas for the coming winter. The Commission stated that the Oklahoma

Natural Gas Company should drill, drill, drill, and keep drilling until it knew it had an adequate quantity of gas. The Commission stated that it was the duty of the Oklahoma Natural Gas Company to procure an adequate quantity of gas at whatever cost, and said Commission stated that if the Oklahoma Natural Gas Company would get the gas it would see that the Oklahoma Natural Gas Company received an adequate return; and on July 19, 1920, the Chairman of the Corporation Commission of Oklahoma wrote this complainant as follows:

"Unless proper and timely provision is made, the supply of gas this coming winter is going to be shorter, and the pressure lower, than has ever yet been experienced on the Oklahoma Natural's line.

430 Shortly after the meeting of your Board of Directors in June this year we inquired of your attorney, Judge Richardson, what provision was being made for an adequate supply of gas for this winter; and he informed us, and we also saw it stated in the newspapers, that the directors had authorized the construction of a compressor station at Wellston, one near Chickasha, and an addition to the one at Blackwell, and also that the Directors had authorized an extensive drilling and purchasing campaign for increasing the supply of gas.

We have been expecting ever since to see these stations commenced and this campaign for an increased gas supply started, but so far no visible move has been made in that direction. It looks as though the Oklahoma Natural Gas Company is going to do as to those stations this year just as it did last year as to the one at Blackwell, delay them so that the shortage will be acute before the stations are completed.

The Commission does not propose to have a repetition this winter of what we went through last winter. It is not going to be content with promises and excuses. The Oklahoma Natural is in the business of serving the public and it can make no claim to care, diligence or forethought, to having performed its duty or having done its best, when, on the heels of last winter's experience, its officers permit the spring and summer months to pass without doing anything to remedy the situation.

The time has come for plain speaking and drastic action. The Oklahoma Natural has got to do business in a competent business-like manner or else vacate in favor of someone who will. If it omits to erect these compressor stations in time, and a shortage of gas results this winter, this Commission intends without delay to put the Oklahoma Natural in the hands of a receiver, who will be energetic and competent, and to take it entirely from under your management and keep it so."

This affiant further states that the Oklahoma Natural Gas Company is now, and at all times since 1917, has been purchasing all the gas which it could purchase in the territory reached by its lines, and that the amount of gas which it has been and is able to purchase, unless supplemented by complainant's own drilling for gas, would

have been and would now be wholly and totally inadequate to supply the demands and needs of complainant's customers.

With reference to the Oklahoma Natural Gas Company's report to the State Board of Equalization for taxation purposes, and the assessment of the State Board of Equalization, affiant says  
431 that the State Board of Equalization itself adopted a schedule for pipe which it applies in making the assessment of all pipe line companies, both oil and gas, and it directed all such companies to make their reports to said State Equalization Board in conformity with said shedule. Said schedule adopted by said Board and in effect at the time of making of said reports was as follows:

2" Line	.....	\$601.00	per mile.
3" "	.....	1,144.00	" "
4" "	.....	1,629.00	" "
6" "	.....	2,665.00	" "
8" "	.....	4,403.00	" "
10" "	.....	4,842.00	" "
12" "	.....	7,309.00	" "
14" "	.....	9,779.00	" "
16" "	.....	13,300.00	" "

This schedule is much less than the real cost of laying a pipe line. In this connection affiant further states that he is informed and believes, and upon said information and belief he says that the assessed valuation of real estate in the various counties in Oklahoma in which the Oklahoma Natural Gas Company has property is not in excess of 50 per cent of the Market Value of said real estate.

Affiant further says that under the laws of the State of Oklahoma the taxes upon all of complainant's operating leases and well equipment and gathering lines running from said wells, are paid by the payment of a gross production tax upon the gas produced from said leases and wells, and that said leases, wells and all equipment thereat and thereon are not liable to an ad valorem tax in Oklahoma.

In the affidavit of W. E. Grimes, it is stated that this affiant testified that only about two million cubic feet of gas a day was produced in the Morrison field, which is reached by the Morrison line, and which line cost \$826,000.00. This statement is an error. This affiant never at any time gave any such testimony. This affiant  
432 testified in this cause, and on several other hearings before said Corporation Commission besides this cause, that under the statutes of Oklahoma and the rules and regulations of the Corporation Commission prohibiting the taking of more than 25 per cent of the open flow volume of any gas well or wells, the Oklahoma Natural Gas Company could only take about two million cubic feet a day out of the Morrison field. This affiant did not testify that the Morrison field only had a production of two million cubic feet per day.

In one of the affidavits filed in defendants' answer it was stated that Samuel S. Wyer testified that leakage in Tulsa plant was about thirty-five per cent of the gas put in. This statement in the affidavit

is an error. On page 354 of the testimony taken in said case at Tulsa, Oklahoma, Chairman Walker of the Corporation Commission asked Mr. Wyer if he could give the per cent of the loss in the distributing plant. His answer was as follows:

"I will give you the in-put and out-put from these plants as well as the plants where the Oklahoma Natural Gas Company is selling to other distributing companies: Tulsa, in-put into distributing plant, 4,952,441 M cubic feet, sales 3,732,156 M Cubic feet, loss, 1,220,285 M Cubic feet."

Chairman Walker: "What percentage does the other town show compared with Tulsa. You say Tulsa is what?"

A. "I have not computed them in terms of per cent. I can give it to you in just a minute if you want it. That would give Tulsa a loss of about twenty-three per cent in round numbers."

Mr. Wyer further testified that he had made no measurement with respect to the leakage, but that he was computing the amount merely from figures furnished him by the Oklahoma Natural Gas Company; that the Oklahoma Natural Gas Company's meter was eight miles from Tulsa on the Osage Line, and that the leakage mentioned included not only the leakage in the distributing system in  
433 Tulsa but also the leakage on eight miles of eight inch high pressure transmission pipe line. During a portion of the period covering the figures given Mr. Wyer, there were four drilling outfits drilling wells in the Osage Field between the said meter and the City of Tulsa, for which drilling purposes gas was being furnished out of said line by the Oklahoma Natural Gas Company on a flat rate of thirty dollars each day; and the gas used by those four drilling wells also went into the leakage; each drilling well used on an average of 100,000 cubic feet of gas per day.

In his testimony respecting leakage in the Tulsa Plant, Mr. Wyer testified that a portion of the leakage was caused by electrolysis, that the electrolysis of the pipes was caused by the omission of the street railway company in Tulsa to properly bond its rails, that the railway company was using the underground pipe lines of the gas system as its return circuit instead of putting in proper bonds; that that condition was beyond the power of the gas company to remedy, and could only be remedied by the city requiring the railway company to properly bond its tracks. Mr. Wyer further testified that a large portion of the leakage was due to "The heaving action of frost in moving the underground pipe, which tends to destroy the tightness of the joints. He said:

"You will find in some of the lines that it freezes. I do not mean that the ground will freeze, but that you will get a lower temperature, and just as soon as you get a lower temperature in the pipe and the pipe contracts and the only way it can contract is to slip in the joint, and in the summer time when the temperature increases the pipe expands and the only way that it can expand is to slip into the inside joint, and that action will cause favorable conditions for leakage.

Q. "All of the conditions causing leakage are inevitable, and the leakage can be prevented only by taking continual care of those conditions as they arise.

A. "Eternal vigilance is the price of a tight gas pipe."

434 Q. "And in order to do that the company has to earn the money with which to do that?"

A. "Certainly."

Q. "I want to ask you then, what do you say about a company that spent almost a million dollars in 1917, almost nine hundred thousand dollars more than it earned, has spent more each year since and including 1917 than it has earned, in undertaking to furnish gas, what would you say as to its ability to undertake to correct that leakage?"

A. "Why, the company would be unable to carry on extensive leakage remedial measures under those conditions.

Q. "The correction of that leakage ought to be taken care of in a depreciation account, ought it not?"

A. "No, I would say it should be entirely separate and a straight allowance in your operation budget.

Q. "For taking care of that leakage?"

A. "Yes, sir.

Q. "Then, Mr. Wyer, I want to ask you this. You take a natural gas company that has been operating since 1907, and ran say until 1912 without paying any dividend, for a number of years paid only about two per cent, then I think for a year or two paid four per cent, and for the last three years paid eight per cent, and has never been permitted to furnish or set aside any sum whatsoever for either depreciation or amortization, what would you say as to the ability of that company to correct leakage in its plants?"

A. "Impossible.

Q. "Now as to the amount of leakage as compared with the leakage in an artificial gas system, I believe you said the leakage in an artificial gas system was about 100,000 cubic feet per year for every mile of three inch line.

A. "Correct, in a well maintained system.

Q. "In an artificial gas system what is the usual pressure maintained?"

A. "Expressed in terms of ounces, usually about one and one-half ounces.

Q. "If you double that pressure you increase the amount of leakage, do you not?"

A. "Yes, sir.

Q. "And every time you increase the pressure you increase the amount of leakage, do you not?"

A. "Yes, sir.

435 Q. "In a natural gas system where they contend they are entitled to a four ounce pressure at the burner tips could the leakage possibly be brought down anywhere approximating that in an artificial gas system?"

A. "Not until the pressures are lowered. There is another feature that apparently all of you have lost sight of, and that is the

lowering of the pressure is not only desirable from the viewpoint of more efficient utilization, but if the gas company maintains only low pressure at all times in its low pressure distributing system, and if it has a leakage, and no plant can be maintained without some leaks, and the gas gets out, if you have a pressure of only an ounce or an ounce and a half, the resistance of the soil will be such, the average soil, even though you have an actual opening between the inside of the pipe and the outside of the soil, that the soil will hold the gas in and the gas will not come out; but if you raise that pressure to in the neighborhood of four or five ounces, the pressure will then be high enough to force the gas out from the soil and into the atmosphere and that is one of the big fundamental reasons why the lowering of pressures is so important from the viewpoint of conservation of natural gas.

Q. "The attitude here is that the pressure must be maintained high.

A. "That is fundamentally wrong.

Q. "And in addition to that, there must be no leakage?

A. "Impossible.

Q. "Now are those two to be reconciled?

A. "They cannot be reconciled."

With respect to the affidavit of Charles L. Daugherty to the effect that he was one of the valuation squad working under the supervision of M. E. Durham, at that time valuation engineer for the Corporation Commission of Oklahoma, that he assisted in listing, inventorying and appraising the production properties of the Oklahoma Natural Gas Company, including oil and gas leases held by that company, and that in so appraising and valuing said leases the leases which were originally taken and held by said company were appraised at the face value recited by the terms thereof, this affiant says: First, no leases which the Oklahoma Natural Gas Company ever took ever recited in their faces, or in any other portion thereof, what the value of said leases were.

436 Second, if the said Daugherty meant by said statement that he and the valuation engineer of the Corporation Commission included in the inventory and appraisal any oil leases, and all the gas leases which the Oklahoma Natural Gas Company had previously obtained, whether then still held and valuable, or whether they had been abandoned, then the said Charles L. Daugherty is again mistaken. For example, it is contended and is a fact that the Oklahoma Natural Gas Company at one time acquired and held an enormous acreage of gas leases in what was known as the Hogshooter field, which was in Washington County, Oklahoma. M. E. Durham's inventory and appraisal, which the said Charles L. Daugherty says he helped to make, contains only the following leases in Washington County; 210 acres of operated leases, appraised at \$968.42, and 470 acres of unoperated leases, appraised at \$760.09.

In the inventory and appraisal of Mr. Musson who acted for the Oklahoma Natural Gas Company, the only leases in Washington County given were 210 acres of operated leases, which he appraised

at \$968.42, and 360 acres of unoperated leases, which he appraised at \$260.09. Prior to the time that the Corporation Commission's engineers began the inventory and appraisal, the Oklahoma Natural Gas Company, through persons employed by it, had made an inventory of its property used and useful in its public service, and they included therein no oil leases of any kind or character, and no property not used or useful in the public service, and they included no leases which had been exhausted or abandoned, or which had been proven to be not valuable for gas. When the said M. E. Durham began to make the said inventory for the Corporation

Commission, he called upon the Oklahoma Natural Gas  
437 Company for its maps, data, inventories, invoices and all other documents which he thought would be of assistance to him, and the same were turned over to him. On December 2, 1919, the said M. E. Durham wrote the Oklahoma Natural Gas Company a letter, in which he said:

"On September 5th, I began an inventory of the properties of the Oklahoma Natural Gas Company for the Corporation Commission. At the time we took up this work we did not know that this company had begun and almost finished the physical inventory of its property, and that it also had adopted an entirely new system of bookkeeping, and systematizing of its property. We soon ascertained this, however, and after proper investigation of the inventory and system of accounting, I concluded that, for the State Corporation Commission, I would accept the inventory made by this company after I had checked same carefully to see if it was correct. We have spent three months making this check, and I went to congratulate you and Mr. Compton and Mr. T. S. Llewellyn on the thoroughness and businesslike manner in which this inventory has been made. We have found very few mistakes, and such as have been found have been corrected."

The inventory which the Oklahoma Natural had made at that time was not the inventory which was subsequently made by Mr. Musson.

Also the said M. E. Durham, valuation engineer for the Corporation Commission, in transmitting and filing his said valuation with the Commission, also attached thereto a letter to the Chairman of the Corporation Commission in which he said:

"Pursuant to the Commission's instructions of September 5, 1919, we have made a detailed Inventory and Appraisal of the properties of the Oklahoma Natural Gas Company, with head office at Tulsa, Oklahoma. This inventory was completed as of September 30, 1919, and covers the properties of this company used and useful in the production, transportation and distribution of natural gas in the State of Oklahoma.

"We spent approximately eight months in making this inventory, using from sixteen to thirty men in the operation, and we can safely say that each and every item listed in this inventory has been carefully examined and listed, before entering the inventory.

"All pipe Lines belonging to this company, whether gathering lines, main lines, or distributing lines, have been blue printed, walked and dug into, at least every one-half mile, and in a greater part thereof, they have been examined by excavation every four hundred feet. In cities where this company distributes gas, the lines have been located with an electric pipe locator, and dug into on every city block

"Every building belonging to the Gas Department of this company has been invoiced and listed, by inspection, and the material listed in each building was so listed while the men making  
438 the inventory were in the building, and great care has been exercised in making the lists of material included in each building as accurate as possible.

"Every item of machinery listed therein, located at compressor plants, on leases, pumping stations, etc., was listed and examined by the writer, and every care was used to get the exact description, location and condition of each item listed.

"The original cost theory has been used in pricing the items listed herein, as nearly as could be possibly done. Over forty thousand vouchers in the company's files have been examined, copied and reduced to a card system, ready for immediate examination. A large per cent of this property could be identified with vouchers, however, on such items as pipe, bought over a period of years, and installed over a period of years, average weighted prices were used, taken from vouchers as above stated.

"On all leases, rights-of-way and fee properties, only actual cost thereof was considered; each and every lease, each tract of fee property, and each rod of right-of-way having been taken from the original instrument, granting same to the Oklahoma Natural Gas Company, and no value was added to these leases, rights-of-way, or fee properties, unless vouchers were in the files showing such expenditures, or it could be proven to us beyond all doubt, that such expenditures were made.

"Vouchers were accessible for pricing the gas wells belonging to this company and were used in each and every instance. We have made no allowances, and have not considered them at all in our values, for such items as 'Engineering and Superintendence during construction.' 'Law expenditures during construction.' 'Injuries during construction.' 'Interest during construction,' and 'Taxes during construction; 'these items we leave for the Commission to add in making the final order.

"We have not considered such items as 'Going concern,' 'Franchise values,' nor 'Working capital' in this inventory, and these items are also left for the Commission to establish."

The entire item for operated leases contained in Durham's inventory and appraisal was only \$327,135.65, and the entire item in his inventory and appraisal for unoperated leases, which the company carried as reserve acreage, was only \$451,415.42; and said Durham's letter of transmittal to the Corporation Commission, and his testimony was to the effect that he allowed for these leases only what

they cost the company as shown by the original instrument itself.

Also in the affidavit of Mr. Daugherty it is stated that the leases which the Oklahoma Natural Gas Company acquired from the Osage & Oklahoma Company and the Caney River Company, the Enid Natural Gas Company and the People's Fuel Supply Company, at the time of the merger or consolidation, were listed, inventoried and appraised at the value represented in the respective assignments from the assignee to said Oklahoma Natural Gas Company.

In Answer to that statement this affiant states that the original of all the assignments of all the leases made by those companies to the Oklahoma Natural Gas Company at the time of said merger or consolidation are now in possession of the Oklahoma Natural Gas Company. A separate assignment was made for all the leases in each county; but in each of such assignments all the leases in any one county were included; and each and every one of the assignments recited and recites a consideration of only \$1.00.

Neither the inventory made by Mr. Durham nor the inventory made by Mr. Musson included any oil lease or any gas leases in the Hogshooter field, or any other gas leases which the company had previously owned but which had been exhausted or abandoned, or which had proved valueless for gas.

When the Oklahoma Natural Gas Company was organized in 1906 it had five stockholders. In 1908 it had one hundred stockholders. In 1910, it had two hundred and fifty stockholders. In January 1917, before the merger, it had five hundred and fifty-two stockholders. In February 1918, after the merger, it had eleven hundred stockholders. In September, 1919, it had twenty-one hundred and thirty three stockholders. In December, 1920, it had twenty-six hundred and fifty-five stockholders. In November, 1921, it had twenty-nine hundred and fifty-eight stockholders. There is not a single stockholder in the Oklahoma Natural Gas Company at this time who was a stockholder in 1906. There have been constant changes in the ownership of the stock, the largest stockholder of the

Oklahoma Natural Gas Company having sold his stock on  
440 May 3rd, 1921.

In the Oklahoma Natural Gas Company's rate case in 1918, W. J. Hagenah, an engineer and accountant, and a member of the firm of Hagenah and Erickson, Engineers and Accountants of Chicago, Illinois, made an inventory and appraisal of the property of the Oklahoma Natural Gas Company, and found the same to be of the value of \$20,467,968.00, of which sum he found that \$185,511.00 was invested in gasoline plants.

In the defendants' answer and in the defendants' affidavits, the inference is sought to be drawn that the Oklahoma Natural Gas Company did not disclose in the hearing herein the result of its oil and gasoline operations. Both the investment in oil and gasoline properties and the receipts of oil and gasoline operations were testified to in the hearing of this case, not only once, but on several occasions. For instance, the Corporation Commission was curious to know how the Oklahoma Natural Gas Company could have paid a dividend on

its oil and gasoline operations in 1920, amounting to \$286,000.00, when the result of its operations showed a net income from oil of only \$6,644.10, and a net income from gasoline of \$48,984.65; and it was explained to the Commission that those were the net incomes from the operations of oil property and gasoline property, but that in addition thereto the Oklahoma Natural Gas Company, during said year, sold its one-half interest in a hundred and twenty acre oil lease for \$255,000.00, and that the dividend was declared largely out of the sale of capital assets in the oil business.

The present indebtedness of the Oklahoma Natural Gas Company is \$3,674,690.96. A statement of its liabilities is hereto attached, marked "Exhibit D", and made a part hereof. The accounts payable shown in this statement are all for material and supplies

441 for carrying on the complainant's natural gas business.

Complainant had 120,000.00 in ad valorem taxes due on the 31st day of December, 1921. It did not have and was unable to get the money with which to pay the same; it was able to pay only about \$17,000.00 thereof.

The Oklahoma Natural Gas Company owes to banks, for money borrowed with which to pay supply bills, the cost of maintenance, and the cost of building new lines, the sum of \$1,619,393.86. These notes and indebtedness are due between this date and the first day of June, 1922; and the complainant has no money with which to pay the same; and under the rates prescribed in said order #1886 the complainant will be wholly unable to meet the said obligations, or any portion of them, and if complainant is remitted to the rates so prescribed by the Corporation Commission the result will be that complainant will be unable to make even a partial payment on said indebtedness, and will be unable to make any showing of better prospects to its creditors, and ther-fore unable to procure extensions, and complainant will be unable to escape an immediate receivership. Three of the directors of the Oklahoma Natural Gas Company are endorsers on the said notes, the company being wholly unable to borrow the money except upon the personal indorsement of said directors, and if they should be required to pay same it would involve them in financial ruin.

In 1919 the Oklahoma Natural Gas Company sold 10,402,923 M cubic feet of gas for domestic purposes. In 1920 it sold 9,254,030 M cubic feet of gas for domestic purposes. In 1921 it sold 9,796,564 M cubic feet for domestic purposes.

In 1919 the Oklahoma Natural Gas Company sold for industrial purposes 6,571,302 M cubic feet of gas. In 1920 it sold 4,434,093 M cubic feet. In 1921 it sold 2,011,681 M cubic feet.

442 For drilling gas, in 1919 the Oklahoma Natural Gas Company sold 3,946,106 M cubic feet; in 1920, 5,590,875 M cubic feet; in 1921, 2,828,814 M cubic feet.

For whol-sale gas, that is gas sold to other independent distributing companies, not under divisional contracts, but at a town border rate, the Oklahoma Natural Gas Company sold in 1919, 1,056,848 M cubic feet; in 1920, 751,788 M cubic feet; in 1921, 636,605 M cubic feet.

Its sales of gas have decreased from 29 billion in 1917 to 14 billion in 1921.

In 1917, the Oklahoma Natural Gas Company and its constituent companies sold for domestic and industrial purposes, gas in the towns and cities served by them directly and indirectly, 17,358,415 M cubic feet; and it sold for drilling purposes and to other pipe line companies the remainder of said 29 billion cubic feet, but the entire proceeds of all the gas sold was received and accounted for as earnings of the public utility.

R. C. SHARP.

Subscribed and sworn to before me this 21st day of February, 1922.

[SEAL.]

EMMA SEBERGER,  
*Notary Public.*

My Commission expires Jan. 12, 1925.

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EXHIBIT B.

Copy.

Corporation Commission of Oklahoma.

Cause No. 3322.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Petitioner,  
vs.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, et al.,  
Respondents.

In the Matter of Applying Schedule of Rates Specified in the Order of September 18, 1918, Heretofore Issued in This Cause.

*Journal Entry.*

By the COMMISSION:

The original Cause herein was instituted on the 19th day of April, 1918, involving schedule governing charges for gas furnished to and distributed by the various gas plants attached to the pipe line of the Oklahoma Natural Gas Company.

On the 18th day of September, 1918, the Commission, after many hearings, issued an order.

The Oklahoma Natural Gas Company on April 12, 1919, filed a motion requesting that the maximum schedule provided for in said order be made effective, quoting therefrom as follows:

"It is further ordered that when the Oklahoma Natural Gas Company shall have built a main line into a southern field and shall have secured a supply of natural gas adequate for its patrons, that upon the completion of this line and connection thereof with its present

system, rates shall automatically be increased to a maximum of 40¢ net per M cu. ft., and a minimum of 25¢ net per M cu. ft."

The motion aforesaid advises the Commission of an extension made by said company into the Cement field.

In the order last mentioned the Commission permitted an immediate raise of rates, the provision being—

"that the Oklahoma Natural Gas Company and distributing companies mentioned herein are hereby authorized to apply to their present schedule of rates increases effective October 1, 1918, amounting to 35¢ per M cu. ft. for the amount specified in the first v break of their sliding scale now in effect with a minimum of 25¢ per M cu. ft. A discount of 10% shall be allowed for prompt payment of bills in accordance with the time now allowed by the schedule effective in the various localities."

This increase becoming effective as indicated is still in force, it having been determined from the record that those supplying gas were entitled to more remuneration for gas used by their patrons.

In the winter preceding the institution of the original cause there was a serious shortage of gas in the communities supplied by the Oklahoma Natural Gas Company and in the hearings which were closed by the original order herein the company admitted its shortage of gas supply and insufficient equipment and advised the Commission that it was necessary to make large expenditures on its original plant and also to build an extension to remote gas areas, and it proposed to make extensive improvements in its original plant and also to lay new pipe lines necessary to reach some other new source of supply. The officials of the company also indicated that the company was unable to make these additions and betterments unless it could borrow money for that purpose and that it was impossible to raise money upon the financial condition and prospects of the company if it continued to endeavor to do business under the old rates.

The Commission, as above indicated, found that in justice to the company an immediate raise should be permitted and accordingly so ordered, and it also appeared that there was great need of an extension to some new gas field and it was agreed that the company should extend its lines to gas areas in the southern part of Oklahoma and it was contemplated that the company would connect up with an indubitable gas supply in that part of the state sufficient to give the Commission and the public some assurance of satisfactory gas service. On these points see the original order as follows:

"\* \* \* the object of this Journal Entry is to reach a decision in anticipation of a threatened gas shortage for the coming winter.  
\* \* \* The Oklahoma Natural Gas Company has given the extension of a main line into a new field where an adequate supply of gas can be secured if it is given the increase asked for."

The Company built an extension approximately fifty miles long running from Oklahoma City southwest to the Cement field and on

or about January 31, 1919, attorneys for the company advised the Commission of the completion of the Cement extension and informally suggested immediate application of the maximum rate referred to in the original order of September 18, 1918, and upon this informal request the Commission made an order in part as follows, to-wit:

"\* \* \* that the Oklahoma Natural Gas Company shall make a showing to the Commission as to the amount of gas made available by reason of the extension made to the Cement Field, showing number of cubic feet of natural gas available, number of wells of the Oklahoma Natural Gas Company in operation and which it owns, the rock pressure and volume of such wells, and number of wells producing natural gas with which it has contracts and the rock pressure and volume of such wells.

"It is further ordered that the Oklahoma Natural Gas Company shall make a showing to the Commission as to other contracts for natural gas in fields south of the Cement field and shall make a showing to the Commission as to the proposed extension to such fields or wells and the time when it is proposed to make such extension.

"It is further ordered that the present rates and the rates now charged shall remain in full force and effect and shall not be increased until the showing hereinbefore asked for is made and until the Commission shall have made and published its findings as to the sufficiency of the extension made and as to the gas available."

445 The Commission was then and is now advised by its Oil and Gas Department that the Cement field produces some oil and that while it may have gas possibilities the Commission would not be safe in so acting as to assure the public generally that those dependent upon the Oklahoma Natural Gas Company for their supply of gas might rely upon the resources of said Cement field.

It is above noticed that in the original order permitting the charge of 40¢ it was provided that the Oklahoma Natural Gas Company should build a main line into a Southern field and thus secure a supply of natural gas adequate for its patrons. The motion before the Commission alleges that the line contemplated has been built but there is no showing that said line affords any gas at the present time or will do so when the same is needed, and it is known that there is at present in the Cement field no supply of natural gas adequate as a reliable contribution to a satisfactory supply for the patrons of the company immediately available. The field may have possibilities but the company has not at the present the connections.

In the motion under discussion the applicant says:

"The Company further reports that from time to time, according to weather conditions, it may be unable to supply all the demand of all its consumers \* \* \*, which, however, is not always possible under extreme weather conditions."

In the motion the applicant, further referring to the order of January 31, 1919, requiring proper showing under the original order of September 18, 1918, says:

"Relative to the order of the Commission that this company make a showing as to the other contracts for natural gas in fields south of the Cement field, and to make a showing as to proposed extensions to such fields and the time when it is proposed to make them, it is respectfully represented that the company has no matured plans with reference to such matters, and has closed no contracts relating thereto."

The records of this Commission show that large areas in the southern part of Oklahoma have been tested and proved for gas and that many wells are in existence; that they have great capacity and the Commission is of the opinion that the company, for the protection of its present investment and for accommodation of its patrons, should seek to take advantage of the gas supply existing in the fields along the Texas border, any of which fields could be more aptly designated as a southern field than the Cement field and wherein there is known to exist at present an ample supply.

The Commission felt at the time the original order was made that it could properly await the completion of the necessary extension and then base a rate upon the investment and only suggested the maximum rate at the time because the company so earnestly represented that it was necessary to do so in order to procure funds for the completion of the extension, and the Commission is of the opinion that the rate would be justified upon the acquisition of an adequate supply in the southern fields but at the present time the extension built is neither used nor useful in the matter of supplying the patrons of the company, and from the best information now before the Commission the said extension will not be either used or useful in supplying the patrons of the company until it is con-

446 nected up with some field having a proven capacity to furnish an adequate supply of gas and obviate the dissension and unsatisfactory conditions existing in the winter preceding the institution of this Cause.

The company in its motion does represent that it has laid many extensions in the old fields from which it has drawn its supply for years past and that it now has an adequate supply from said fields but a supply for the present time or even for the past winter is no indication of ability to serve its patrons under conditions such as existed in the winter of 1917-1918 which these entire proceedings have been calculated to remedy. In fact, as heretofore quoted, the company advises the Commission in the motion aforesaid that it may not be in position to reasonably protect its patrons.

The state of Oklahoma has for a considerable while spent large sums of money in the conservation of natural gas and it has so happened that since this conservation has been carried on the larger fields newly developed have been discovered in territory remote from the lines of the applicant, the territory referred to being along

the Kansas line on the north and along the Texas line on the south. The company claims that it has been desirous of reaching these fields with its line but it has been unable to do so on account of lack of funds. The agents and attorneys of the company say that investors prefer to assist pipe lines conducting gas from Oklahoma into Kansas and from Oklahoma into Texas for the reason that in these two states gas rates are now and in times past have been considerably higher than gas rates in the state of Oklahoma. This is a fact—gas is being distributed in the states mentioned at prices much higher than in the state of Oklahoma but as heretofore indicated, the company has a large investment which it ought to protect and as new fields are discovered they ought to be reached. It is more particularly the duty of this Commission to fix rates upon existing investments than it is to create conditions to induce investments.

The Commission is of the opinion that the sources in the eastern and central part of the state from which the company has heretofore drawn its supply cannot be depended upon for any length of time and that its patrons will be without gas in a short while unless other fields are reached, and the Commission is of the opinion that the lines should be extended to these fields. The Commission feels now as it did on the 31st day of January, 1919, that the things contemplated by the order of September 18, 1918, have not been accomplished and that the company is not at present in position to insist upon the installation of the maximum rate contended for.

The records show that when this case was presented the furnishing company and the distributing companies were dividing the money received for gas sold according to agreement which, under the old rate, seemed to be just and proper but in the hearing it was suggested that these contracts should be abandoned and that a flat rate should be fixed by the company for the sale of gas at the various city gates. By the time the hearings were concluded and the order was reached it seemed that the chief thing to do was to take immediate steps to assure the public of a supply of gas for the approaching winter and it was thought best not to cause delay by interference with the existing plan of dividing the remuneration between the furnishing and the distributing companies; however, reports made by the companies since the issuance of the original order indicate that the aforesaid suggestion should be carried out and that a flat rate should be fixed for gas delivered by the furnishing company at the various city gates.

447 There has been in times past and is now too much contention on the one hand concerning the price of gas and too little disposition on the other hand to furnish the same in sufficient quantity. The Commission suggest that a more satisfactory understanding between the applicant and the people should be cultivated and that more diligent effort to reach and maintain a gas supply should be made and when this is done there should be no doubt of the installation of rates justly remunerative for the product furnished and the service rendered.

The motion indicates that the company has expended large sums in building the line to Cement; and in doing so in good faith and

with the justification of the order aforesaid it is reasonable to expect that the company would demand a return on the investment and it is undoubtedly entitled to do so, but before it can be claimed that the things contemplated by the former order have been accomplished there should be a competent and comprehensive showing not only of the possibilities of the Cement field but of the gas actually available for use in time of need. It is not sufficient to say that there is now plenty of gas in the eastern fields because the order which the company is invoking was obtained upon the representation and belief that these fields were about exhausted. Even after consideration of the motion aforesaid the Commission is still of the opinion that the public can no longer look with safety to the old fields heretofore used by the company and therefore insists that there should be a proper showing that the new line has reached a real gas field capable of meeting the demands of the public in times when gas is actually needed.

Wherefore, premises considered and the Commission being fully advised, it is ordered that the motion under consideration be abated and that the order of January 31, 1919, remain effective until there is more substantial evidence of a satisfactory supply secured by the new extension contemplated by the original order.

Done at Oklahoma City, Oklahoma, in the regular order of business on this the 18th day of April, 1919.

## CORPORATION COMMISSION.

\_\_\_\_\_,  
*Chairman.*

\_\_\_\_\_,  
*Commissioner.*

\_\_\_\_\_,  
*Commissioner.*

Attest:

\_\_\_\_\_,  
*Secretary.*

448

## EXHIBIT C.

Copy.

GU-299-A.

Corporation Commission of Oklahoma,  
Oklahoma City, Okla.

December 15th, 1921.

Corporation Commission,  
State of Oklahoma.

GENTLEMEN:

"Investigation of the Duncan Gas Field."

An investigation of the gas situation in the Duncan field, with reference to the gas wells connected to the Oklahoma Natural Gas Company's pine line, has been made. The following interests and representatives collaborated in this investigation:

Oklahoma Natural Gas Company,	R. C. Sharp, V. P.
" " " "	A. Leonard, V. P.
" " " "	H. Hazzard, Field Supt.
Corporation Commission,	A. L. Walker, Commissioner.
" " " "	E. R. Hughes, "
" " " "	Ben. F. Davis, Chief Con. Officer.
" " " "	Geo. W. Casey, Con. Officer.
" " " "	J. W. Clinkscales, Con. Officer.
" " " "	J. W. Duvall, Gas Engineer.

At the time of this investigation the Oklahoma Natural Gas Company was taking gas from some thirty-five wells in the Duncan district. In this investigation the open flow capacity of each well was measured and the pressure at which the well was working at the time of the inspection was noted, together with the pressures existing at the end of a one minute period and a fifteen minute period after the well was shut in. The condition of the well was also noted with reference to the amount of water, oil or dirt that it produced. In addition to this, the orifice meter measuring the output of each well was inspected and checked for accuracy at zero flow. The general condition of the well and field line make up at the well, together with the meter installation was noted with reference to leakage.

In addition to the above field work, this investigation includes a study of the delivery of each well for the month of November, and also for each day of the month, together with the open flow capacity and rock pressure of each well at the time it was connected to the Oklahoma Natural Gas Company's pine line.

Each well was allowed to blow fifteen minutes prior to determining the open flow capacity. While this does not give the true open flow

capacity, the result is close enough for all practical purposes. In determining the open flow capacity, the momentum of the gas due to its velocity was measured at the outlet of a piece of standard pipe of sufficient length to overcome eddy currents. The mouth of the Pitot tube used in this measurement was held flush with the end of the pipe and about  $\frac{1}{4}$  of the pipe's diameter for its edge. The pressure of each well was determined fifteen minutes after the well was shut in, which pressure approximates the true rock pressure.

449 In this investigation it was the intention of the participants to carry out each phase of the work with the same degree of accuracy. Therefore, the specific gravity and temperature of the flowing gas were not determined as the error introduced from this source is negligible compared to the error introduced by holding the mouth of the Pitot tube in the wrong position in the gas stream. However, there is one error introduced in this work which has been corrected because of its magnitude. This error consists in taking the values for open flow capacity from the conservation department's table of open flow capacities for a  $6\frac{1}{4}$ " opening when the flow of gas is measured through a 6" opening. This error increases the open flow capacity of the well about 8 per cent and should be considered.

All of the data obtained on this investigation are tabulated under the proper headings on the attached sheet. By referring to this data you will note that the total open flow capacity of the wells in question amounts to 459,635,000 cubic feet per twenty-four hours, and the total delivery into the pipe line for the month of November amounts to 613,765,000 cubic feet, which amount represents 4.5 per cent of the total open flow capacity. By referring to the individual well deliveries for the month of November you will also note that they range from .3 of 1 per cent to 10.4 per cent of the individual open flow capacities.

A study was made of the daily deliveries of each well for the month of November and the maximum twenty-four hour delivery tabulated on the data sheet. You will note that the sum of these maximum twenty-four hour deliveries amounts to 54,254,000 cubic feet which amount represents 11.8 per cent of the total open flow capacity. While this figure in itself represents nothing, if you will refer to the individual maximum twenty-four deliveries you will note that they range from 4.1 per cent to 24.3 of the individual open flow capacities and in no case does the out-put for twenty-four hours of any well exceed 25 per cent of such well's open flow capacity.

The data on the rock pressure and open flow capacity of the wells at the time that they were connected to the pipe line show an average rock pressure for all the wells of 568 pounds per square inch and a total open flow capacity of 911,950,000 cubic feet, as compared to an average rock pressure of 379# per square inch, and a total open flow capacity of 459,635,000 cubic feet as of December 1, 1921, which represents a decrease of 33 per cent in the average rock pressure, and a decrease of approximately 50 per cent in the total open flow capacity. It will also be noted that twenty-nine of the thirty-five

wells in question were connected to the pipe line within the year 1921.

With reference to the general condition of the wells it might be stated that at the time of this investigation seventeen of the wells showed no signs of water or oil, eighteen of the wells made some water. Three of the above wells also made some oil and three of them also made a great deal of dirt in the form of fine shale. One of these wells was shut in on this investigation until such time as the company could install a trap to catch such dirt.

A general investigation of each orifice meter setting was made. The size of the orifice was noted and the co-efficient checked. A zero test was also made on each meter. The zero test revealed two of the meters registering one inch differential high, which error is in favor of the well owner, and one meter registering one inch differential low, which error is in favor of the pipe line company.

As a whole the meter installations were in very good condition. 450 It was the intention to incorporate in this report the capacity of the pipe line from the Duncan field to Oklahoma City. However, no data is available at the present time on the capacity of the compressor station at Norge.

Respectfully submitted,

J. W. DUVALL,  
*Gas Engineer.*

J. W. D.:R. L.

(Here follows table marked page 451.)

Lessor.	Well No.	Sta. No.	Sec.	Twp.	Rgs.	Date of test.
Armstrong .....	1	183	24	1S	9W	11/30
" .....	2	238	24	1S	9W	11/20
" .....	3	202	24	1S	9W	11/30
" .....	5	186	24	1S	9W	11/30
" .....	1	184	24	1S	9W	12/ 1
" .....	2	200	24	1S	9W	12/ 1
" .....	3	255	24	1S	9W	12/ 1
Reavis .....	1	207	24	1S	9W	12/ 1
" .....	2	207	24	1S	9W	12/ 1
" .....	3	227	24	1S	9W	12/ 1
Cox .....	1	194	25	1S	9W	12/ 1
" .....	2	194	25	1S	9W	12/ 1
" .....	3	194	25	1S	9W	12/ 1
" .....	4	236	25	1S	9W	12/ 1
Taliaferro .....	2	225	27	1S	8W	11/30
" .....	3	243	27	1S	8W	11/30
" .....	1	248	28	1S	8W	11/30
" .....	2	258	28	1S	8W	11/30
" .....	1	252	28	1S	8W	11/30
Clark .....	1	218	25	1S	9W	12/ 1
" .....	2	244	25	1S	9W	12/ 1
" .....	1	246	25	1S	9W	12/ 1
" .....	2	253	25	1S	9W	12/ 1
Ketchum .....	2	229	25	1N	9W	12/ 2
" .....	3	242	25	1N	9W	12/ 2
Morgan .....	1	214	32	1N	8W	12/ 2
" .....	1	216	32	1N	8W	12/ 2
Edmonds .....	2	209	25	1S	9W	12/ 1
Spears .....	1	221	32	1N	8W	12/ 2
Clarkson .....	5	219	30	1S	8W	12/ 2
Wilkinson .....	2	222	27	1S	8W	12/ 2
Miller .....	7	250	5	2S	8W	12/ 2
Mah-Vah-Quah ....	1	217	29	1S	9W	12/ 2
Cook .....	1	220	30	1N	8W	12/ 2
Nigh .....	1	188	34	1S	8W	12/ 2

Totals .....  
Averages .....

*Investment of Gas Wells Connected to the Oklahoma Natural Gas Company's Pipe Line in the Duncan District.*

December 5, 1921.

														At time of connection to pipe line.		
p.	Rgs.	Date of test.	Pressure, lbs. per sq. in.			Open flow pres.	Presen- open flow capacity, M cu. ft.	Delivery for November, M cu. ft.	Per cent of open flow.	Maximum daily del., M cu. ft.	Per cent of open flow.	No. days well was used.	Rock pres.	Open flow capacity, M cu. ft.	Date.	
			Wrk.	1 min.	15 min.											
S	9W	11/30	...	100	240	3 #	4	5,443	2,955	1.8	736	13.5	11	680	45,991	8/20
S	9W	11/20	...	220	260	55 #	4	17,752	12,773	2.4	989	5.5	27	320	18,194	8/21
S	9W	11/30	225	210	240	50 #	4	17,311	6,462	1.2	717	4.1	15	530	65,716	1/21
S	9W	11/30	740	730	740	145 #	6	53,378	63,529	4.0	5,763	10.8	22	850	52,985	2/21
S	9W	12/ 1	240	210	260	2.4" M	4	3,445	2,641	2.5	406	11.8	12	630	12,568	9/20
S	9W	12/ 1	240	150	260	5.2" M	6	11,189	11,484	3.4	1,197	10.7	20	530	41,949	1/21
S	9W	12/ 1	740	280	720	15 #	6	25,363	28,102	3.7	2,845	11.2	19	800	19,230	11/21
S	9W	12/ 1	...	50	240	3.5 #	4	5,883	6,510	0.8	1,561	5.7	13	320	8,277	2/21
S	9W	12/ 1	210	210	240	10 #	6	21,436						375	34,433	
S	9W	12/ 1	235	60	245	4.0" M	4	4,435	2,462	1.9	484	10.9	17	300	7,039	8/21
S	9W	12/ 1	...	220	250	32 #	4	14,735						440	11,272	
S	9W	12/ 1	290	100	290	10 #	4	9,527	39,408	3.5	3,724	9.8	23	450	16,000	12/20
S	9W	12/ 1	...	230	260	25 #	4	13,678						550	61,000	
S	9W	12/ 1	260	160	260	58 #	4	18,017	11,606	2.1	1,097	6.1	19	325	44,644	8/21
S	8W	11/30	410	170	440	14 #	4	10,942	30,842	9.4	2,065	18.9	30	810	29,766	7/21
S	8W	11/30	590	440	620	11 #	6	22,391	61,464	9.2	4,003	17.9	27	990	36,719	9/21
S	8W	11/30	600	350	650	45 #	4	16,774	47,903	9.5	3,960	23.6	26	900	25,157	10/21
S	8W	11/30	630	470	650	58 #	4	18,017	1,761	0.3	793	4.4	4	690	25,173	11/21
S	8W	11/30	590	400	600	40 #	4	16,107	49,231	10.2	3,931	24.3	24	900	29,766	11/21
S	9W	12/ 1	260	250	260	20 #	4	12,568	16,613	4.4	1,821	14.5	24	360	17,000	5/21
S	9W	12/ 1	250	230	260	50 #	4	17,311	25,819	5.0	1,996	11.5	26	390	35,000	9/21
S	9W	12/ 1	240	100	250	5 #	4	7,039	17,764	8.4	1,662	23.6	21	390	35,000	10/21
S	9W	12/ 1	250	240	260	62 #	4	18,194	18,274	3.4	1,770	9.7	18	280	38,000	11/21
S	9W	12/ 2	...	270	365	10 #	4	9,527	13,644	4.8	1,069	11.2	30	700	11,712	8/21
S	9W	12/ 2	540	100	540	7" M	4	5,883	12,721	7.2	1,118	19.0	30	725	7,379	9/21
S	8W	12/ 2	...	150	260	3.4" M	6	9,357	4,531	1.6	420	4.5	19	470	15,375	4/21
S	8W	12/ 2	...	330	690	4.5" M	6	10,606	8,854	2.8	1,614	15.2	8	350	15,749	4/21
S	9W	12/ 1	250	200	250	7.0" M	6	13,236	11,761	3.0	881	6.7	22	500	30,364	2/21
S	8W	12/ 2	...	150	350	2.0" M	5 3-16	4,917	15,374	10.4	1,142	23.2	29	800	12,000	6/21
S	8W	12/ 2	310	170	320	13 #	4	10,635	17,664	5.5	868	8.2	30	725	31,000	6/21
S	8W	12/ 2	380	80	390	2 #	4	4,435	9,137	6.9	537	12.1	30	450	10,000	7/21
S	8W	12/ 2	610	580	610	105 #	4	21,650	51,501	7.9	3,909	18.1	29	690	27,000	10/21
S	9W	12/ 2	...	50	690	0.8" M	4	1,909	2,759	4.8	452	23.7	16	680	2,724	5/21
S	8W	12/ 2	220	100	220	5.0" M	4	4,973	6,645	4.5	628	12.6	19	600	19,574	6/21
S	8W	12/ 2	...	5	70	0.5" M	4	1,572	1,571	3.3	96	6.1	30	380	18,194	9/20
							459,635	613,765		54,254					911,950	
							379		4.5		11.8	23	568			

connected to the Oklahoma Natural Gas Company's Pipe Line in the Duncan District.

December 5, 1921.

At time of connection to  
pipe line.

	Presen- open flow capacity, M cu. ft.	Delivery for November, M cu. ft.	Per cent of open flow.	Maximum daily del., M cu. ft.	Per cent of open flow.	No. days well was used.	Rock pres.	Open flow capacity, M cu. ft.	Date.	Lessee.	Remarks.
4	5,443	2,955	1.8	736	13.5	11	680	45,991	8/20	Geneva Pearl.....	Dry Gas.
4	17,752	12,773	2.4	989	5.5	27	320	18,194	8/21	" " .....	" "
4	17,311	6,462	1.2	717	4.1	15	530	65,716	1/21	" " .....	" "
6	53,378	63,529	4.0	5,763	10.8	22	850	52,985	2/21	" " .....	Some Water.
4	3,445	2,641	2.5	406	11.8	12	630	12,568	9/20	Best of All.....	" "
6	11,189	11,484	3.4	1,197	10.7	20	530	41,949	1/21	Speege 1 et al.....	Dry Gas.
6	25,363	28,102	3.7	2,845	11.2	19	800	19,230	11/21	" " .....	" "
4	5,883						320	8,277		Fred Dierks.....	" "
6	21,436	6,510	0.8	1,561	5.7	13	375	34,433	2/21	" " .....	" "
4	4,435	2,462	1.9	484	10.9	17	300	7,039	8/21	" " .....	Some Water.
4	14,735						440	11,272	11/20	Holmes & Faucett.....	Some Water.
4	9,527	39,408	3.5	3,724	9.8	23	450	16,000	12/20	" " .....	Dry Gas.
4	13,678						550	61,000	1/21	" " .....	Some Water.
4	18,017	11,606	2.1	1,097	6.1	19	325	44,644	8/21	" " .....	" "
4	10,942	30,842	9.4	2,065	18.9	30	810	29,766	7/21	Com. Oil Corp.....	Some Oil.
6	22,391	61,464	9.2	4,003	17.9	27	990	36,719	9/21	" " .....	Some Water.
4	16,774	47,903	9.5	3,960	23.6	26	900	25,157	10/21	Principle Oil.....	Dry Gas.
4	18,017	1,761	0.3	793	4.4	4	690	25,173	11/21	" " .....	" "
4	16,107	49,231	10.2	3,931	24.3	24	900	29,766	11/21	Kelly & Phil.....	" "
4	12,568	16,613	4.4	1,821	14.5	24	360	17,000	5/21	Baseline Oil.....	Some Water.
4	17,311	25,819	5.0	1,996	11.5	26	390	35,000	9/21	" " .....	Dry Gas.
4	7,039	17,764	8.4	1,662	23.6	21	390	35,000	10/21	Crump & Beard.....	Some Water.
4	18,194	18,274	3.4	1,770	9.7	18	280	38,000	11/21	" " .....	" "
4	9,527	13,644	4.8	1,069	11.2	30	700	11,712	8/21	Amerada Pet.....	Dry Gas.
4	5,883	12,721	7.2	1,118	19.0	30	725	7,379	9/21	" " .....	Some Water.
6	9,357	4,531	1.6	420	4.5	19	470	15,375	4/21	Victor Oil.....	Dry Gas.
6	10,606	8,854	2.8	1,614	15.2	8	350	15,749	4/21	Carter Oil.....	Some Water.
6	13,236	11,761	3.0	881	6.7	22	500	30,364	2/21	" " .....	Dry Gas.
5 3-16	4,917	15,374	10.4	1,142	23.2	29	800	12,000	6/21	R. L. Smith.....	Some Water.
4	10,635	17,664	5.5	868	8.2	30	725	31,000	6/21	Roxana Petr.....	" "
4	4,435	9,137	6.9	537	12.1	30	450	10,000	7/21	Woopick Oil.....	" "
4	21,650	51,501	7.9	3,909	18.1	29	690	27,000	10/21	Empire Gas.....	" "
4	1,909	2,759	4.8	452	23.7	16	680	2,724	5/21	Wilkin-Hale.....	Dry Gas.
4	4,973	6,645	4.5	628	12.6	19	600	19,574	6/21	Natl. Explor.....	Some Water.
4	1,572	1,571	3.3	96	6.1	30	380	18,194	9/20	N. American.....	Dry Gas.
...	459,635	613,765	4.5	54,254	11.8	23	568	911,950			



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## EXHIBIT D.

*Funded Indebtedness, Current Liabilities, & Taxes Summary,  
January 28, 1922.*

Funded Indebtedness.....	\$1,010,000.00
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## Current Liabilities:

Accounts Payable.....	\$201,563.52	
Notes Payable.....	1,619,393.86	
Gas Purchased Payable.....	269,510.21	
Consumers Security Deposits (as at November 30, 1921)	287,534.04	
Advance Payments, Drilling Gas .....	61,241.50	
		2,439,243.13

## 1921 Taxes Unpaid:

Ad Valorem Taxes due Dec. 31, 1921 unpaid.....	103,973.62	
Ad Valorem Taxes due June 15, 1921 unpaid.....	121,474.21	
		225,447.83

Total .....	\$3,674,690.96
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Oklahoma Natural Gas Company,  
Tulsa, Oklahoma.*Statement of Funded Indebtedness Showing Maturities.*

## First Mortgage Bonds Paying 6% Interest.

## 1922.

March 1, 1922.....	\$87,000.00	
April 1, 1922.....	23,000.00	
October 1, 1922.....	74,000.00	
		\$184,000.00

## 1923.

March 1, 1923.....	\$152,000.00	
April 1, 1923.....	24,000.00	
October 1, 1923.....	73,000.00	
		\$249,000.00

## 1924.

March 1, 1924.....	\$200,000.00	
April 1, 1924.....	23,000.00	
October 1, 1924.....	50,000.00	
		\$273,000.00

1925.

March 1, 1925.....	\$154,000.00	
October 1, 1925.....	50,000.00	
		\$204,000.00
October 1, 1926.....	\$50,000.00	
October 1, 1926.....	50,000.00	
		\$100,000.00
Total .....		\$1,010,000.00

454 *Statement of Accounts Payable as at January 28, 1922.*

Alexander & Alexander .....	\$1,750.00
Bessemer Gas Engine Company .....	3,010.93
G. T. Braden .....	5,298.72
Colonial Trust Company .....	4,469.63
Continental Supply Company.....	14,229.26
S. R. Dresser Manufacturing Co. ....	6,360.12
Dickason-Goodman Lumber Company .....	1,460.67
Foxboro Company .....	2,919.60
Frick-Reid Supply Company .....	6,947.26
Industrial Construction Company .....	6,812.62
Kansas City Bolt & Nut Company .....	1,889.55
Ludlow Valve Manufacturing Co. ....	2,113.52
T. H. Mastin & Company .....	3,308.01
Marnet Mining Company .....	1,696.00
Metric Metal Works .....	15,173.98
The National Supply Company .....	6,887.78
The Natural Gas Ass'n of America .....	1,081.81
Neeley & McGill .....	20,314.00
Norval & Dial .....	2,140.00
Republic Supply Company .....	1,211.32
Ryan Motor Company .....	1,117.53
The Sherwin-Williams Company .....	1,316.71
Southern Hardware & Supply Co. ....	2,329.53
Stevenson-Browne Lumber Company .....	2,692.65
Superior Tube Company .....	3,898.38
The Texas Company .....	7,286.40
G. W. Thomas .....	3,449.00
W. G. Van Arsdale .....	1,000.00
Westcott & Greis .....	7,196.10
Westcott Valve Company .....	6,764.92
Worthington Pump & Machinery Corp. ....	1,320.00
Miscellaneous Bills .....	54,117.52
Total .....	\$201,563.52

## Notes Payable as at January 26, 1922.

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No.	In favor of—	Date.	Time.	Due.	Amount.
Due in February:					
165.	H. C. Wilson.....	1/6	30 days	2/5	\$1,423.20
137.	Ryan Motor Company.....	11/30	70 days	2/8	7,000.00
164.	".....	12/29	45 days	2/12	2,206.47
168.	Central National Bank.....	1/9	35 days	2/13	50,000.00
158.	McEwen Mfg. Co.....	12/15	60 days	2/13	16,813.46
162.	National Supply Company.....	12/27	50 days	2/15	13,000.00
134.	Oklahoma Contracting Co.....	11/18	90 days	2/16	7,000.00
115.	Mellon National Bank.....	10/18	4 mos.	2/18	100,000.00
160.	Atlas Supply Company.....	12/24	.....	2/18	3,500.00
124.	Butler County Nat'l Bnk.....	11/19	3 mos.	2/19	25,000.00
125.	".....	11/19	3 mos.	2/19	10,000.00
126.	".....	11/19	3 mos.	2/19	5,000.00
127.	".....	11/19	3 mos.	2/19	5,000.00
128.	".....	11/19	3 mos.	2/19	5,000.00
161.	Dodge Sales & End. Co.....	12/24	60 days	2/22	1,500.00

\$252,443.13

## Notes Payable as at January 26, 1922.—Continued.

No.	In favor of—	Date.	Time.	Due.	Amount.
Due in March:					
140.	Oklahoma Contracting Co.....	12/1	90 days	3/1	2,881.20
169.	Interstate Pipe Company.....	1/7	60 days	3/8	20,000.00
153.	Buckeye Traction Ditcher Co.....	12/9	3 mos.	3/9	586.66
166.	Central National Bank.....	1/9	60 days	3/10	100,000.00
167.	".....	1/9	60 days	3/10	40,000.00
171.	Colona Manufacturing Co.....	1/10	60 days	3/11	6,754.32
159.	S. R. Dresser Mfg. Co.....	12/15	90 days	3/15	10,176.19
173.	Metric Metal Works.....	1/18	60 days	3/19	8,000.00
174.	National Trans. Pump & Mech. Co.....	1/18	60 days	3/19	6,711.87
176.	Petroleum Electric Co.....	1/19	60 days	3/20	3,172.30
178.	Westcott Valve Co.....	1/25	60 days	3/26	3,000.00
179.	Oklahoma Contracting Co.....	1/26	60 days	3/27	7,000.00
					208,282.54
Due in April:					
170.	Interstate Pipe Co.....	1/7	90 days	4/7	11,348.52
141.	Mellon National Bank.....	12/12	4 mos.	4/12	100,000.00
142.	Columbia National Bank.....	12/18	4 mos.	4/19	100,000.00
143.	Monongahela National Bk.....	12/18	4 mos.	4/19	50,000.00
144.	Mellon National Bank.....	12/18	4 mos.	4/19	200,000.00
145.	".....	12/18	4 mos.	4/19	200,000.00
146.	".....	12/18	4 mos.	4/19	100,000.00
147.	Butler County Nat'l Bk.....	12/19	4 mos.	4/19	25,000.00
148.	First Nat'l Bank, Emlenton.....	12/19	4 mos.	4/19	20,000.00
149.	First Nat'l Bank, Emlenton.....	12/19	4 mos.	4/19	50,000.00



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*Summary.*

Central National Bank .....	\$190,000.00
Mellon National Bank .....	800,000.00
Columbia National Bank .....	170,000.00
Colonial Trust Company .....	100,000.00
Monongahela National Bank .....	50,000.00
Butler County National Bank .....	75,000.00
First National Bank, Emlenton .....	70,000.00
Other Companies .....	164,393.86
<b>Total .....</b>	<b>\$1,619,393.86</b>

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*Statement of Gas Purchased Payable as at January 28, 1922.*

Suspense Items .....	\$37,221.60
December Gas Unpaid .....	22,288.61
January Gas Unpaid (Approximated) .....	210,000.00
	<hr/>
	\$269,510.21

Endorsed: Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

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No. 6.

In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Rebuttal Affidavit of R. C. Sharp.*

R. C. Sharp, on his oath states, that the order hereto attached, and marked "Exhibit A" hereto, is a true and correct copy of order No. 1829, made by the Corporation Commission of Oklahoma on December 20, 1920, fixing and prescribing temporary rates to be charged for natural gas by all distributing plants owned by the Oklahoma Natural Gas Company and by all distributing plants to which the Oklahoma Natural Gas Company furnished gas, which said order by its terms was to be in effect from January 1, 1921, until March 31, 1921.

Prior to the making of said order, to-wit on January 6, 1920, the Supreme Court of Oklahoma in the case of Muskogee Gas & Electric Company v. State, 186 Pac. 730, held that the rate making power of the Corporation Commission is not limited to any particular theory or method, and that the Commission might, if it had the necessary facts before it, prescribe a temporary schedule of rates to be effective until the Commission has had time to make an investigation and a valuation of the property of the public utility.

Nevertheless, in the case of City of Oklahoma City v. The Corporation Commission, 195 Pac. 498, the Supreme Court of Oklahoma granted a writ of prohibition against the Corporation Commission, prohibiting it from enforcing its said order No. 1829 so made on December 20, 1920, and prohibiting the Oklahoma Natural Gas Com-

pany from putting into effect the said rates therein prescribed, 459 on the ground, first, that the Corporation Commission had made said rates without a valuation; second, that the Oklahoma Natural Gas Company bore no relation to the towns and cities in which it did not own the distributing plant, but where it only furnished gas to local distributing companies to be distributed; and third, that the Commission had no power to prescribe a rate or to grant an increase in rates for the purposes specified in said order. Thereafter, on the 14th day of June, 1921, in the case of City of Bartlesville v. The Corporation Commission, 199 Pac. 396, the Supreme Court of Oklahoma again held that the Corporation Commission had power to fix temporary rates, without a valuation.

In the Corporation Commission's order No. 1886, made on June 25, 1921, it is stated that the Commission would judicially notice the

fact that the price of gas at the mouth of the well had declined. There was no evidence introduced before the Commission to the effect that the price of gas at the mouth of the well had declined, and the fact is that the price of gas at the mouth of the well has not declined, but the Oklahoma Natural Gas Company was being required at the time the Corporation Commission of Oklahoma made said order, and has been required ever since, to pay the sum of ten cents per thousand for gas at the mouth of the well; and in some instances gas is being sold at the mouth of the well for eleven and a half cents per thousand.

R. C. SHARP.

Subscribed and sworn to before me this 21st day of February, 1922.  
 [SEAL.] EMMA SEBERGER,  
*Notary Public.*

My commission expires Jan. 12, 1925.

460 Before the Corporation Commission of Oklahoma.

No. 1829.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Petitioner,

vs.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation; GUTHRIE Gas, Light, Fuel & Improvement Company, a Corporation; Muskogee Gas & Electric Company, a Corporation; Shawnee Gas & Electric Company, a Corporation; The Commonwealth Public Service Company, a Corporation, and W. L. C. Curtis, Receiver Thereof; The Southwestern Oklahoma Gas & Fuel Company, a Corporation, and the Following Cities and Towns, to wit: Oklahoma City, El Reno, Enid, Guthrie, Muskogee, Wagoner, Tulsa, Chandler, Pond Creek, Claremore, Yukon, Red Fork, Turley, Dawson, Stroud, Davenport, Wellston, Luther, Edmond, Meeker, Arcadia, Kelleyville, Midlothian, Depew, Peckham, Inola, Porter, Ramona, Haskell, Coweta, Shamrock, Sapulpa, and Carney, All Being Municipal Corporations of the State of Oklahoma, Respondents.

*Order.*

The Oklahoma Natural Gas Company filed its petition herein on August 5, 1920. It alleged that it was not making a reasonable return upon the value of its property used and useful in serving the public, and it prayed that the Commission establish a city gate rate to be charged for its gas at the gates of each and every town and city served by it, either directly or indirectly, and that the Commission would fix reasonable and remunerative rates for gas to be charged by the petitioner both at the city gates and to the consumers.

The City of Claremore, and the towns of Ramona and Inola, each represented to the Commission that they were not on the main line

of the Oklahoma Natural Gas Company, and that conditions existed peculiar to them, and that the case should be determined with respect to them upon separate hearings, and upon the application of the above named towns and cities the Corporation Commission ordered that Claremore, Ramona and Inola be eliminated from the hearing insofar as it affected the towns and cities on the main line, and that the case be heard as to them separately. The City of Enid also made the same request originally, but subsequently its representative withdrew that request and stated to the Commission that the City of Enid and the Enid system might be considered in connection with the whole of the Oklahoma Natural Gas Company's system, and that whatever order was made should cover that system.

461 Many different hearings have been had in regard to the value of the property of the Oklahoma Natural Gas Company used and useful in serving the public, and in regard to the operating expenses of the said company, and many exhibits have been introduced with respect to both the value of the property, the amount of gas produced, the amount purchased, and the expense of the company.

Mr. J. M. Gayle, of the firm of Musson & Gayle, Accountants and Engineers, appeared as a witness for the Oklahoma Natural Gas Company, and submitted an exhibit purporting to be an audit of the books and vouchers of the Oklahoma Natural Gas Company showing the amount of its investment and finding the original cost of the property of the company to October 31, 1919, as shown by the vouchers of the company, to be \$16,190,000.00. Mr. H. E. Musson of the same firm made an inventory and appraisal of the Oklahoma Natural Gas Company's property upon both an original cost basis and a reproduction cost basis; and Musson's Exhibit 1 introduced showed the value of the property of the Oklahoma Natural Gas Company up to October 31, 1919, upon the original cost basis, to be \$16,061,960.00.

Mr. M. E. Durham while appraisal engineer for the Corporation Commission made an inventory and appraisal of the physical property of the company alone as of September 30, 1919, and he found the original cost of the physical property as of that time to have been \$13,150,651.39. Mr. Durham testified, however, that he omitted from his inventory and appraisal the entire labor charge upon the installation of the Oklahoma Natural Gas Company's pipe line running from Cement to Walters, a distance of about fifty-five miles. Mr. Durham also testified that no overheads were considered in his appraisal, and that considering the omission of the labor items upon the Walters line and the omission of overheads, there would be very little, if any, difference between his original cost appraisal and the original cost appraisal of Mr. Musson.

Mr. Dalious, Auditor of the Oklahoma Natural Gas Company, filed his exhibits from 1 to 14, showing additions to the property of the Oklahoma Natural Gas Company from October 31, 1919, to May 13, 1920, to be \$740,382.00 and the additions to the property of the company since May 31, 1920, to be \$729,717.38.

Musson's Exhibit 2 put the reproduction cost of the entire property of the Oklahoma Natural Gas Company at \$33,023,258.94.

Witnesses also testified that the average depreciation of the Oklahoma Natural Gas Company's properties was only 18 per cent.

All of the above testimony stands in the record undisputed; the Commission, however, does not consider reproduction value at peak prices as a proper basis for rate making, nor can the Commission overlook the fact that the usefulness of certain portions of this property in delivering gas from the fields where now located relates largely to the past; other portions which are of vital interest to present consumers will doubtless be of little value to customers of the near future.

The permanent capital account of a public utility should cover only such investments as are to be used in rendering permanent service. Expenditures by a public service company that are to be useful for the current year only should be charged to operating expenses, even though such expenditures are for such new construction, extensions or developments as would be properly chargeable to capital account if same could be of permanent value. Expenditures for extensions or improvements that are reasonably expected to be of service for a limited number of years should be amortized during such years so that the capital account shall not be burdened at any time with property not then useful in serving the customers of such company.

462 The Commission is not at this time prepared to express an opinion as to the fair, reasonable value of the property now used and useful in serving the patrons of the Oklahoma Natural Gas Company, but it is clearly apparent that if the company is not to be deprived of the value of certain of its properties by failing to receive compensation therefor during the time when such property is being used to aid in rendering service, and if future customers are not to be unjustly burdened by payment of return upon property no longer of material service to them, then there must be provided a fund sufficient to take care of line extensions, compressor stations and such other expenditures as are from time to time necessary in maintaining the best possible standard of current service.

The Commission, without undertaking to place a precise value upon the property of the Oklahoma Natural Gas Company used and useful in rendering its services, is of the opinion that except for the continued outlay which the company is required to make in order to extend its lines to new gas territory and to build compressor stations, and to meet competition from intrastate companies, its earnings under the present prevailing rates would be reasonable.

The evidence shows that the peak of gas production available to the Oklahoma Natural Gas Company was reached in the year 1917, and that since that time the supply has more or less steadily declined until the amount of gas now available for distribution by this company is approximately only two-thirds as much as was available during the year 1917, while the number of consumers desiring to use the gas has continually increased.

For some two years now the company has declined to extend its lines to serve new customers whom it was not obligated to serve;

but the increase of population and the erection of new buildings in towns and cities that the company was already serving, and where the obligations to serve without discrimination compels extensions, adds hundreds of new customers each year.

The distribution of a decreasing supply of gas among an increased number of patrons has steadily brought on a crisis that has resulted in great inconvenience and much actual suffering during extreme cold weather upon the part of those not supplied and equipped to use other fuel.

In its efforts to reach new fields and to secure additional supplies of gas the evidence shows that the company has expended approximately one and half million dollars annually for the last four years. Evidence shows that a large portion of these expenditures has gone into capital account, although largely incurred in order to enable the company to continue serving patrons already attached to the system; this by reason of the fact that the receipts of the company were insufficient to cover these expenditures and leave the necessary funds for the payment of dividends upon the investment.

The evidence shows that the extensions and additions thus made in an effort to maintain service has added approximately 50% to the company's capital account, making the payment of dividends more difficult and new capital relatively harder to secure. As the supply of gas from existing fields is exhausted rapidly the company that is unable to make extensions to new fields must inevitably fail to supply gas in any measure approximating the needs of its patrons. A reasonable return upon the money invested in the property actually used and useful in supplying the needs of the public cannot be denied if a continuation of the service is desired; nor can the service be continued except the funds be available to make extensions to new supplies of gas, when available, and to provide pump stations to force through the lines low pressure gas that cannot be delivered otherwise.

463 It is clearly apparent from the evidence in this case that the present rates applied to the available supply of gas will not produce sufficient funds to meet the various items of expense referred to above, each of which must be met, if the available supply of gas is not to decline and the service deteriorate to a point where it will be utterly unsatisfactory and wholly inadequate.

Those who have become accustomed to the use of natural gas will not willingly return to other fuel so long as it is practicable to secure gas for a reasonable price. A comparison between natural gas and coal, oil or other available fuel shows that for domestic purposes at least gas is not only more cleanly and convenient but more economical at the rate herein provided than is any other available fuel.

The Commission is compelled to take note of the fact that the trend of prices to-day is definitely downward. How long this decline will continue before a stable basis of values is again established it is not now possible to determine, so that any rate now applied must of necessity be of a temporary nature.

The evidence shows that the applicant, the Oklahoma Natural Gas Company, is, and for many years has been, furnishing gas at

the city gate to a number of distributing companies and accepting in payment therefor an agreed per cent of the collection for the gas as measured at the consumers' meters.

It is alleged by the applicant that the cost of securing gas and transmitting same to the city gate has increased proportionately much more than has the cost of distributing gas within the city, so that justice to the several companies interested can be best assured and the interest of the public best protected by fixing a price for gas at the city gate sufficient to cover the cost of gas at the well and for gathering and transporting same to the city gate, requiring each local distributing company to pay for the gas at the city gate and to assume all responsibility for same from there to the consumer's meter.

The distributing companies maintain that the percentage contracts heretofore entered into between their several companies and the Oklahoma Natural Gas Company should not be disturbed. There has, however, been no evidence produced in this hearing tending to show that any distributing company interested is not now receiving an adequate return for all service rendered by such company. If these distributing companies are not receiving an adequate return it would be clearly unjust to the consumers to permit these companies to share in any additional rate authorized at this time. The question as to whether these percentage contracts heretofore entered into between the Oklahoma Natural Gas Company and its several agent companies are private and inviolable contracts and beyond the power of the state to abrogate or modify, is now pending before the Supreme Court of this state. Pending the decision of the court the Commission will express no opinion upon this question; but no necessity having been shown for increased returns to any distributing company the Commission will not now make any provisions for any increased compensation to any distributing company, but will retain jurisdiction of this case until after the decision of the Supreme Court in the case above referred to, and should the court hold these percentage contracts to be private, inviolable contracts, this order may be revised to conform to the decision of the court.

The Commission is also of the opinion that except for the continued outlay necessary upon the part of the Oklahoma Natural Gas Company in extending its lines to new gas fields, installing compressor stations and other expenses incurred in supplementing and renewing the gas supply, the present return to the Oklahoma Natural  
464 Gas Company would cover all ordinary expenses and provide a reasonable return upon its investment; the Commission, however, is convinced that this company is not longer able to secure new money with which to make such extensions, improvements and betterments as to give reasonable hope for a supply of gas in any way adequate to the needs of its customers, and the Commission is agreed that the public interest can be best served by providing a fund which is available to meet necessary expenses that may be incurred in securing additional gas supplies. The Commission knows of no way to provide such a fund except through the medium of an addition to the rates now in effect.

It is therefore ordered by the Commission:

First: That the temporary rates heretofore made effective on April 15th, 1920, be continued in effect until March 31st, 1921, or until further orders of this Commission. All sums collected under the said rates to be apportioned between the Oklahoma Natural Gas Company and the several distributing companies upon the present basis unless and until otherwise ordered by this Commission.

Second: It is hereby ordered that in all towns or cities served by the Oklahoma Natural Gas Company, either directly or indirectly, excepting Claremore, Inola and Ramona and excepting the town of Carney and the cities of Duncan and Marlow, to which gas is furnished at a city gate rate, the following rates shall be charged and collected for all natural gas furnished for any purpose:

For the first 100,000 cu. ft. per month 58¢ per M cu. ft.

For the next 400,000 cu. ft. per month 50¢ per M cu. ft.

All in excess of 500,00 cu. ft. per month 40¢ per M cu. ft.

A penalty of two (2) cents per M cu. ft. on all bills not paid on or before the 10th day from date of same.

All sums accruing from the collection of the additional rates herein provided by its patrons to be used by it, with the approval of this monthly as collected, to the Oklahoma Natural Gas Company and by said company set aside, reserved and maintained as a special fund provided by its patrons to be used by it, with the approval of this Commission, for the laying of additional pipe lines, installing compressor stations, or such other improvements or betterments as may be agreed upon between the company and the Commission as may reasonably be relied upon to provide additional supplies of natural gas for the patrons of this company.

This order shall take effect and be in force from and after January 1st, 1921, until March 31st, 1921, or until otherwise ordered by the Commission.

Done at Oklahoma City, Oklahoma, this 20th day of December, 1920.

[SEAL.]

CORPORATION COMMISSION.

ART L. WALKER,

*Chairman.*

CAMPBELL RUSSELL,

*Commissioner.*

R. E. ECHOLS,

*Commissioner.*

Attest:

P. E. GLENN,

*Secretary.*

Endorsed: Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

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No. 2.

In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit of J. E. Dalious in Rebuttal.*

No. 2.

J. E. Dalious on his oath states that he is auditor of the Oklahoma Natural Gas Company and has been so since December 15, 1919.

Since the making of affiant's former affidavits herein the Oklahoma Natural Gas Company has been enabled to close its books for the month of December 1921, thus closing its books for the year 1921.

During the month of December 1921 the Oklahoma Natural Gas Company's gross income from the sale of all gas which it sold for all purposes, excluding however Claremore, Inola, Ramona and Bixby, which are not involved in this law suit, and calculating said income at the rates fixed by the Corporation Commission under its order No. 1886, was the sum of \$546,125.50. Complainant's total operating expenses for said month of December 1921, excluding however the expenses in Claremore, Inola, Ramona and Bixby, were \$438,136.92, leaving the Oklahoma Natural Gas Company a net operating income for the month of December 1921 of \$107,988.58.

From July 1, 1921, the date the Commission's order No. 1886 went into effect, to December 31, 1921, the Oklahoma Natural Gas Company's gross earnings from the sale of gas for all purposes, excluding however the gas sold in Bixby, Claremore, Inola and Ramona, which are not involved herein, at the rates prescribed by the Corporation Commission in order No. 1886 \$1,693,300.36. The Oklahoma Natural Gas Company's total operating expenses for said same period were \$1,786,951.33, leaving a net operating deficit during said six months of \$93,650.97.

Said operating deficit exists, without charging to expenses for either amortization or depreciation; but the said operating deficit is merely the excess of complainant's actual operating expenses over and above its gross income during said period from July 1, 1921, to December 31, 1921.

During the calendar year 1921 the Oklahoma Natural Gas Company's gross earnings from the sale of gas for all purposes, excluding however Claremore, Inola, Ramona and Bixby, which are not involved in this case, was \$4,297,051.97. This was the Oklahoma Natural Gas Company's actual gross income from the sale of gas, except in the towns above mentioned, during said year, the first six

months of the year being at the rates existing prior to the making of order No. 1886, and the last six months of the year being at the rates prescribed in order No. 1886. The Oklahoma Natural Gas Company's total operating expenses during said calendar year were \$3,762,436.02. In these operating expenses there is included no sum for either amortization, depreciation, or dividends. Neither is there included any sum invested in building new lines or extensions or in building compressor stations. The Oklahoma Natural Gas Company's net operating income for the year 1921, upon the rates actually existing during said year, was \$534,615.95.

During the year 1921 the Oklahoma Natural Gas Company's total sales of domestic gas in all of its own plants except Claremore, Inola, Ramona and Bixby, which are not involved in 467 this case, and in all of the local distributing companies to which the Oklahoma Natural Gas Company furnishes gas for distribution, was 9,796,564 M cubic feet. Of this amount the Oklahoma Natural Gas Company itself sold and distributed 3,449,196 M cubic feet in the towns and cities in which it owns the distributing systems, excepting however Claremore, Inola, Ramona and Bixby, which are not involved in this case; and 6,347,368 M cubic feet were sold by local independent distributing companies who are furnished with gas by the Oklahoma Natural Gas Company.

During the year 1921 the Oklahoma Natural Gas Company's total sales of industrial gas were 2,014,990 M cubic feet, of which amount 703,233 M cubic feet was sold by complainant in its own distributing plants, and the remainder was sold by local independent distributing companies to which the Oklahoma Natural Gas Company furnishes gas.

During the year 1921 the Oklahoma Natural Gas Company's total sales of gas for drilling purposes were 2,028,814 M cubic feet.

The Oklahoma Natural Gas Company's total sales of gas during the calendar year 1921 for all purposes, excluding however the gas sold in Claremore, Inola, Ramona and Bixby was 13,840,368 M cubic feet, and including Claremore, Inola, Ramona and Bixby was 14,044,728 M cubic feet.

J. E. DALIOUS.

Subscribed and sworn to before me this 21st day of February, 1922.  
[SEAL.] EMMA SEBERGER,

Notary Public.

My commission expires Jan. 12, 1925.

Endorsed: Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Rebuttal Affidavit of J. E. Dalious.*

J. E. Dalious being first duly sworn on his oath states that he is auditor of the Oklahoma Natural Gas Company. The amounts of natural gas sold in complainant's own distributing systems in the month of January 1920, January 1921, and January 1922, are as follows:

January, 1920.

Industrial Gas.....	62,425 M
Domestic Gas.....	1,103,158 M
Total.....	1,165,583 M

January, 1921.

Industrial Gas.....	78,831 M
Domestic Gas.....	872,886 M
Total.....	951,717 M

January, 1922.

Industrial Gas.....	76,354 M
Domestic Gas.....	798,658 M
Total.....	875,012 M

In January 1920 the demand for industrial gas was large enough to have enabled complainant to have sold as much industrial gas as it sold domestic gas; but owing to the fact that the month of January, 1920, was extremely cold, and complainant's supply of 469 gas was inadequate, it was required under general orders of the Corporation Commission, and did, cut off its industrial consumption, in order that its domestic consumers might be adequately served. In January 1921 and also in January 1922, the demand for industrial gas was practically negligible, owing to the low price of coal and fuel oil. Within the last month there has been a reduction in the price of Pennsylvania crude oil, and within the last three weeks there has been a reduction of thirty cents per

barrel in the price of Healdton crude oil, and within the last two weeks there has been a reduction of 25 cents per barrel in the price of Arkansas crude oil, and it is now possible to buy fuel oil at prices of from 50 to 60 cents per barrel.

The gross revenue which plaintiff received for the gas which it sold in its own distributing plants in January 1920, at the rates prescribed by the Corporation Commission and then in effect, was \$352,345.60. The gross revenue which it received from the gas sold in January, 1921, at the rates prescribed by the Corporation Commission and then in effect, was \$373,471.22.

The gross revenue which complainant would have received for the gas sold in its own distributing plants in January, 1922, at the rates prescribed by the Corporation Commission and complained of in this case, would have been \$333,466.80.

The total amount of gas which complainant furnished to local distributing companies during the months of January 1920, January 1921, and January 1922, were as follows:

January, 1920.

Domestic Gas.....	871,555 M
Industrial Gas.....	61,339 M
Total.....	938,894 M

January, 1921.

Domestic Gas.....	734,126 M
Industrial Gas.....	98,453 M
Total.....	832,579 M

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January, 1922.

Domestic Gas.....	988,602 M
Industrial Gas.....	156,236 M
Total.....	1,144,838 M

The gross income of the Oklahoma Natural Gas Company from the gas furnished by it to local distributing companies in January 1920, at the rates then prevailing, was \$235,272.83. Its gross income from the gas furnished to local independent distributing companies in January 1921, at the rates then prevailing, was \$254,906.58. Its gross income from the sale of gas to the local independent distributing companies in January, 1922, at the rates fixed by the Corporation Commission of Oklahoma, was \$278,397.70.

The amounts of wholesale gas sold by the Oklahoma Natural Gas Company during the months of January 1920, 1921 and 1922, were as follows:

## January, 1920.

Domestic Gas.....	75,824 M
Industrial Gas.....	None
Total.....	75,824 M

## January, 1921.

Domestic Gas.....	79,695 M
Industrial Gas.....	None
Total.....	79,695 M

## January, 1922.

Domestic Gas.....	78,747 M
Industrial Gas.....	640 M
Total.....	79,387 M

The gross revenue received by the Oklahoma Natural Gas Company for wholesale gas for the months of January in said years at the rates prescribed by the Corporation Commission of Oklahoma is as follows: January 1920, \$14,438.43; January 1921, \$15,692.64; January 1922, \$19,814.75.

The Oklahoma Natural Gas Company's total gross revenue from its sales of gas for all purposes, excluding however Bixby, Inola, Claremore and Ramona, which are not involved herein, at the rates prescribed by the Corporation Commission were as follows: January 1920, \$602,056.86; January 1921, \$654,070.44; January 1922, \$631,679.25.

It is not usual for the Oklahoma Natural Gas Company to have large sales of industrial gas in the months of January and February, because of the fact that ordinarily those months are so cold that complainant's entire supply of gas is needed in order to serve its domestic consumers and therefore for the most part the industrial consumption is cut off during those months. During the spring, summer and fall months however the Oklahoma Natural Gas Company's industrial consumption in past years, that is prior to the fall of 1920, has been very large. But since the fall of 1920, due to the decline in the price of coal and fuel oil, and due to the increased cost of gas in the field, the greater distances which the Oklahoma Natural Gas Company is required to transport it, and the consequent greater cost of furnishing gas for industrial purposes, the Oklahoma Natural Gas Company has been unable to sell any substantial amount of industrial gas, even in the spring, summer and fall months; and the result is that during those months, owing to the fact that its patrons are not heating their homes, but are merely using a pittance of gas for cooking and hot water heating purposes, the Oklahoma Natural Gas Company operates at a deficit, and the only

months during the year when its income exceeds its expenses are the months of November, December, January, February and March; and the only months out of those five when the income is substantially in excess of the expenses are the two months of January and February.

The Oklahoma Natural Gas Company's gross income in its own distributing plants during the month of January, 1922, at the rates charged by it under the restraining order granted by this court was \$466,145.93. Its gross income from the local independent distributing companies during the month of January 1922 at the rates charged under the restraining order granted by this court was \$377,257.90. Its gross income during the month of January 1922 from wholesale gas at the rates charged by it under the restraining order granted by this court was \$27,689.44. Its gross income from its entire sales of gas for all purposes during the month of January 1922 at the rates charged by it under the restraining order granted by this court, excluding however the gas sold in Bixby, Inola, Claremore and

Ramona, which are not involved herein, was \$871,093.28.

472 It requires from 45 to 50 days from the end of a month in order for the Oklahoma Natural Gas Company to receive, classify and tabulate and aggregate its expenses during any one month, so that it is impossible at this time to state with exactness what the expenses of the Oklahoma Natural Gas Company were during the month of January, 1922. The Oklahoma Natural Gas Company's expenses during December 1921 were \$438,136.92. During said month of December, 1921, the Oklahoma Natural Gas Company's expense for gas purchased was \$191,167.24, whereas during the month of January 1922 the Oklahoma Natural Gas Company's expense for gas purchased was \$215,512.53; and this affiant estimates that the Oklahoma Natural Gas Company's total expenses during the month of January 1922 will be at least \$475,000.00.

J. E. DALIOUS.

Subscribed and sworn to before me this 25th day of February, 1922.

[SEAL.]

EMMA SEBERGER,

*Notary Public.*

My commission expires Jan. 12, 1925.

Endorsed: Filed in District Court on February 27, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

473 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Joint Affidavit of R. C. Sharp and J. E. Dalious in Rebuttal.*

R. C. Sharp and J. E. Dalious, each first being duly sworn, upon their oath depose and say: R. C. Sharp is Vice President of the Oklahoma Natural Gas Company and J. E. Dalious is Auditor of said company.

With respect to that portion of the affidavit of C. S. Thompson here-ofore made herein, in which it is stated that the Oklahoma Natural Gas Company carries as a part of its regular operating expense accounts covering changes in construction, repairs to wells or leases, repairs to lines, repairs to buildings, drilling wells, surrendered leases, and abandoned wells and lines, these affiants state that it is true that said items are so carried in the Oklahoma Natural Gas Company's operating expenses, and these affiants state that the operating expense account is the proper and only account in which to carry said items; and that the only portion of the items of changes in construction, repairs to wells or leases, repairs to lines, repairs to buildings and drilling wells, which enters into the Oklahoma Natural Gas Company's operating expense account is the labor items. If a pipe line, for example, is taken up and removed and laid to another place, the expense of so doing would come under the head of change in construction; but only the labor item, that is to say the labor of taking up the pipe line, and the cost of transporting it to its

474 new location and relaying it, is put in. Whenever leases are surrendered, only the actual cost of the lease is charged to the operating expense.

The same thing is true with respect to abandoned wells and lines. As a matter of fact the Oklahoma Natural Gas Company never abandons any pipe which it can get out of a well, and it never abandons any pipe lines. Whenever a gas well is exhausted, the pipe in the well is pulled, and is used at other places, if it is possible to get the pipe out, and only the labor items are charged to expense. Whenever the gas from a well or a gas field is exhausted, the pipe lines are taken up, and are used again by laying them to new wells and new fields, and only the labor item is charged.

In said affidavit the said Thompson states that all said charges should be charged to depreciation reserve fund. Since these affiants have been connected with the Oklahoma Natural Gas Company there has been no depreciation reserve fund, and that company has not earned any money which could go into a depreciation reserve fund.

The said Thompson in his affidavit also challenges the charge for interest paid on borrowed capital, and he states that the same is not justly chargeable to expense for the reason that the Oklahoma Natural Gas Company is allowed a working capital. In the Corporation Commission's order No. 1886, it purported to allow a working capital of only \$494,382.39, whereas it excluded as working capital and from complainant's valuation altogether some \$680,000 of property, a large portion of which was warehouse stock which the Oklahoma Natural Gas Company was required to carry. Also its rates have been such that the Oklahoma Natural Gas Company has been required to borrow and now owes \$1,660,000 of floating indebtedness, all of which is due between now and the first day of June, and which money the Oklahoma Natural Gas Company was required to borrow in order to pay its expenses in furnishing the public with gas. These affiants state that complainant is entitled to charge the interest on said money as a part of its operating expense, and  
475 the same is so recognized by all auditors and accountants.

With respect to that portion of the affidavit of the said C. S. Thompson in which it is stated that complainant has from time to time paid dividends on its stock outstanding and has charged the same as an ordinary operating expense, these affiants state that said statement is absolutely untrue; that complainant has never charged dividends as an operating expense. The earnings, expenses and dividends stated in the bill in this case and heretofore shown in the affidavits filed, and as corrected and shown in the rebuttal affidavit of R. C. Sharp are true and correct. The net earnings as shown in said bill and in said affidavits constitute merely the excess of complainant's gross income over and above complainant's actual operating expenses, not considering dividends as an expense and not considering the cost of new lines to new wells and the cost of new compressor stations as an expense. In complainant's profit and loss statements during past years it has shown the dividends paid, for the purpose of showing the surplus of the company after paying dividends; but it has never charged dividends as an expense of any kind or character.

With respect to that portion of the affidavit of said C. S. Thompson relating to the merger of the various companies into the Oklahoma Natural Gas Company in the year 1917, and the values of the property so taken, the true facts with respect thereto are set forth in the rebuttal affidavit of R. C. Sharp, and need not be further noticed here.

With respect to that portion of said affidavit of C. S. Thompson in which it is stated that the Oklahoma Natural Gas Company had a net income during 1920 of 23% upon the value of its property, and that from the sworn reports for the period from June 30, 1909, to June 30, 1920, the average net return on the fair physical value of the property was 20%, these affiants state that said statement is wholly untrue. In the first place, the Corporation Commission of Oklahoma in its order No. 1886, upon a physical valuation of the Oklahoma Natural Gas Company's property, made by the Corporation Commission's own engineer, and also the physical valuation of

476 said company's property made by other engineers, and after hearing evidence in regard to the value of said property during a period of almost eleven months, found the value of said property to exceed the sum of \$18,000,000. In the year 1920 complainant's net earnings, by making no allowance for amortization or depreciation, were only \$1,460,748.02; whereas had said company earned 8% for return on dividend upon its production, transmission and distribution property, and an additional 8% upon its production and transmission property for amortization or depreciation, and 5% upon its distribution property for amortization or depreciation, as suggested by the Commission in its said order No. 1886, and as suggested by the defendants in their answer herein, then complainant would have earned during said year over and above its expenses a sum in excess of \$2,900,000.

R. C. SHARP.  
J. E. DALIOUS.

Subscribed and sworn to before me this 21st day of February, 1922.  
[SEAL.] EMMA SEBERGER,

*Notary Public.*

My commission expires Jan. 12, 1925.

[Endorsed:] Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

477 In the United States District Court in and for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Reply Affidavit of C. S. Thompson.*

C. S. Thompson, of lawful age and after being duly sworn upon his oath deposes and says: that he is the same person by the name of C. S. Thompson, who executed an affidavit in the above and foregoing cause, to which said affidavit one R. C. Sharp and J. E. Dalious filed rebuttal affidavits, and said C. S. Thompson, as a reply to the rebuttal affidavit of the aforesaid parties, deposes and says that the following is true:

With respect to that portion of the rebuttal affidavit of R. C. Sharp and J. E. Dalious, heretofore made herein, in which it denies the charges as made in the original affidavit of C. S. Thompson, as to expense accounts charged, changes in construction, repairs to wells, or leases, repairs to lines, or buildings, lines and wells, surrendered leases or abandoned wells and lines, said C. S. Thompson, deposes and affirms that these accounts are not being properly carried in

the Capital Account of the Company; that for example the Company accounts establishing new lines into new fields, are and should be Capital Accounts. Affiant claims that in case used or second hand pipe should be laid into the fields, instead of new pipe, that this same operation, as to charging this to Capital Account, should hold. The loss in the value of the pipe, the charges for labor, cartage and etc. should be taken into *considered* and carried as Capital Account. To this account there should be charged yearly a fair amount for depreciation over the whole system, which in due course of time would wipe out all charges on the original labor and materials, as would be found in the Capital Account on lines, buildings etc. in the various works of the Oklahoma Natural Gas Company.

With respect to the question of surrendered leases, there comes into consideration another element, which, the affiant believes, has not been definitely settled. This relates to the right of the public service corporation to indiscriminately lease, rent or purchase lands for development purposes. This is especially true as to leases in a territory undeveloped, unknown, and in the terms of the oil fraternity, strictly wild-cat enterprises, and charge the same to operating expenses, and value them in the valuation of the Company's properties. Nothing in the reports of the Oklahoma Natural Gas Company to the Corporation Commission discloses the fact that these surrendered leases are leases from which the Oklahoma Natural Gas Company, originally obtained a supply of gas.

With respect to that portion of the rebuttal affidavit covering the matter of depreciation set forth in the original affidavit the affiant does not claim that the Oklahoma Natural Gas Company has a Depreciation Reserve Fund. He does claim that it is justly due its patrons and its stockholders, that it should have a Depreciation Reserve Fund, and before dividends were paid such Depreciation Reserve should have been set aside.

With respect to that part of the rebuttal affidavit covering interest on borrowed capital, the affiant still maintains that the working capital to which the Oklahoma Natural Gas Company is intitled, and which the Commission set aside for it is sufficient. Especially is that true if the collections are kept in good condition, as they should be, and their actual Capital Account is as shown.

Interest paid by the Company on borrowed money for the purpose of operating is not a proper charge to the expense account. This view has been maintained by various Commissions in the country.

With respect to that portion of the affidavit of the said R. C. Sharp and J. E. Dalious relating to the payment of dividends on the outstanding capital stock of the Oklahoma Natural Gas Company, this affiant still maintains and states that said dividends were so paid and that the same were charged to the operation expenses of said company. This affiant states that his said affidavit as originally filed and as herein made was and is based upon an examination of the

records and the report of the Oklahoma Natural Gas Company, which were duly filed by its authorized officers and agents, with the Corporation Commission of the State of Oklahoma. That said return and report were made by it pursuant to the regular order of said Corporation Commission, and in manner and form as prescribed and provided for it and other like companies. This affiant further states that said dividends aforesaid appear on sheet covering the operating expenses of the said Oklahoma Natural Gas Company, and must therefore be a part of the said operating expenses of this company.

With respect to that portion of the rebuttal affidavit of the said R. C. Sharp and J. E. Dalious, relating to the consolidation of the various companies mentioned in, to and with the Oklahoma Natural Gas Company in the year of 1917, this affiant states that his original affidavit and the statement herein made were and are based upon information taken from the records and the report of the said Oklahoma Natural Gas Company, and from the testimony in the hearing of a cause, in which the Oklahoma Natural Gas Company was a party, before the Corporation Commission of the State of Oklahoma in the year of 1918; and affiant states that said affidavit and the statements therein contained are based upon the testimony given by one Mr. Bartlett at that time an officer of said company, and by the aforesaid report; and further states that his said statements  
480 are fully borne out by the report and testimony of said company filed with the Commission. Affiant further states that all of said reports were under the signature of and were sworn to by the officers of the said Oklahoma Natural Gas Company having control of its physical and financial affairs.

With respect to that portion of the rebuttal affidavit above mentioned, which attempted to cover the question of net income from the period of June 30th, 1919 to June 30th, 1920, this affiant states that his calculation of percentage therein mentioned, and his calculation of the net earnings made by the Oklahoma Natural Gas Company were not based on said order No. 1886, but were and are based upon the physical value of the properties of the Oklahoma Natural Gas Company as taken from its Annual, Quarterly and Monthly reports. This affiant further states that items not properly considered a part of the physical value of the company's properties were deducted therefrom in making his calculation, and that there is nothing in the report of said Company, or from the record made in the Corporation Commission office to show where any fund or money was ever expended by said Company for the items which this affiant deducted from the value of the company's property. Affiant further states that taking into consideration the charges of operating expenses which are not justly included as operating expenses, but which should be charged to the Capital Account, and taking into consideration the aforesaid proper deductions, as shown in this original affidavit on file herein, the net earnings of the said Company show the amount to be as is set forth in said original affidavit. This affiant again affirms and states that the net income for the year of 1921 was 23% and that its net earning over the period from June 30th, 1919

to June 30th, 1920 was 20%. This affiant further states that the statements and allegations, notwithstanding the rebuttal affidavit of the said R. C. Sharp and J. E. Dalious, was and is in all respects true and correct and that upon a fair valuation and a fair consideration of the company's properties, it is at this time earning  
 481 far in excess of the amount that it is justly entitled under the law to receive.

This affiant again affirms and states that the matters and facts set forth in his original affidavit and herein set forth are gleaned from the sworn testimony and from the reports of the Oklahoma Natural Gas Company, and he therefore believes and affirms that the same must be true and correct.

C. S. THOMPSON.

Subscribed and sworn to before me this 27 day of February, 1922.  
 [SEAL] TOM C. WALDREP,

*Notary Public.*

My commission expires on the 24 day of Jan. 1925.

Endorsed: Filed in District Court February 27, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

482 In the District Court of the United States for the Western District of Oklahoma.

Equity. No. 501.

OKLAHOMA NATURAL GAS COMPANY

vs.

CAMPBELL RUSSELL et al.

*Order.*

The application of complainant for a temporary injunction having been fully presented and submitted upon the pleadings, evidence, arguments and briefs of counsel and the court being fully advised and a majority of the court (Judge Pollock dissenting) being of the opinion that the decision upon this application is governed and ruled by the decision in the case of Prentis v. Atlantic Coast Line, 211 U. S. 210—

It is ordered that said application be and the same is hereby denied.

To the making of this order and the denial of said application the complainant excepts and its exception is allowed.

KIMBROUGH STONE,  
*Circuit Judge.*

JOHN H. COTTERAL,  
*District Judge.*

Endorsed: Filed in District Court April 27, 1922. Arnold C. Dolde, Clerk.

483 In the District Court of the United States for the Western District of Oklahoma.

No. 496. Equity.

OKMULGEE GAS COMPANY, Plaintiff,

v.

CORPORATION COMMISSION OF STATE OF OKLAHOMA et al.,  
Defendant-.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, Plaintiff,

v.

CAMPBELL RUSSELL et al., Defendants.

No. 502. Equity.

OKLAHOMA GAS AND ELECTRIC COMPANY et al., Plaintiffs,

v.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.,  
Defendants.

484 Mr. E. S. Ratliff, Mr. W. P. McGinnis, Mr. A. L. Burt,  
Mr. M. B. Cope, Mr. W C Herndon, and Messrs. Asp, Snyder,  
Owen & Lybrand, For Defendant-.

Mr. C. B. Ames, Mr. T. G. Chambers, Mr. Russell G. Lowe, Mr.  
D. A. Richardson, For Complainant.

Before Stone, Circuit Judge, and Pollock and Cotteral, District  
Judges.

*Opinion.*

*STONE, Circuit Judge:*

This is an application for a temporary injunction to restrain the enforcement of certain gas rates on the ground that such rates are confiscatory. The complaint alleges that the complainant is a public service corporation furnishing natural gas to consumers within the State of Oklahoma; that the rates in question had been established under orders of the Corporation Commission of the state and had been in force and operation for some time; that complainant made application to the Commission for higher rates; that this application was fully heard upon voluminous evidence and resulted in an order denying such application; that complainant, thereafter, appealed from this order to the Supreme Court of the State; that it applied for a supersedeas, or stay, of the order of the

Commission pending this appeal, which was denied; that such appeal is now pending. The above situation is conceded.

I think the application for a temporary injunction should be denied upon the ground that it is premature. I am compelled to this conclusion by my understanding of the decision in *Prentis v. Atlantic Coast Line*, 211 U. S. 210. That case was an attempt to enjoin (as confiscatory) railway rates established by orders of the State Corporation Commission of Virginia.

The Method of regulating public utility rates in Virginia, as there outlined in the opinion of Mr. Justice Holmes (page 224), was as follows:

"The state constitution provides that the commission, in the performance of the duty just mentioned, shall from time to time prescribe and enforce such rates, charges, classification of traffic, and rules and regulations, for transportation and transmission companies doing business in the State, and shall require them to establish and maintain all such public service, facilities and convenience, as may be reasonable and just. Before prescribing or fixing any rate or charge, etc. it is to give notice (in case of a general order not directed against any specific company by name, by four weeks' publication in a newspaper) of the substance of the contemplated action and of a time and place when the commission will hear objections and evidence against it. If an order is passed, the order again is to be published as above before it shall go into effect. An appeal to the Supreme Court of Appeals is given of right to any party aggrieved, upon conditions not necessary to be stated, and that court, if it reverses what has been done, is to substitute such order as in its opinion the commission should have made. The Commission is to certify the facts upon which its action was based and such evidence as may be required, but no new evidence is to be received, and how far the findings of the commission can be revised perhaps is not quite plain. No other court of the State can review, reverse, correct or annul the action of the commission, and in collateral proceedings the validity of the rates established by it cannot be called in doubt.

When a rate has been fixed, the commission has power to enforce compliance with its order by adjudging and enforcing, by its own appropriate process, against the offending company the fines and penalties established by law. But a hearing is required, and the validity and reasonableness of the order may be attacked again in this proceeding, and all defenses seem to be open to the party charged with a breach."

Pending such an appeal from the Commission, a supersedeas might be allowed (p. 234).

The method of regulating public utility rates in Oklahoma 486 is identical with the above outlined Virginia method and so conceded to be by all parties hereto.

The complaints in the *Prentis* case were filed after the Commission had made the orders establishing rates, but before publication of the ordered rates, and without any appeal being taken from the action

of the Commission. The Supreme Court held that "the most plausible objection" to the bills was that "they were brought too soon" (p. 229), and that objection ruled the decision of the case. Why the Court, in that case, thought those bills brought too soon is of controlling importance in the matter now before this court. If the Prentis decision was based upon the view that those bills were premature because the courts should not interfere until the legislative process of rate making had become final and that such process did not (in Virginia) become final until the Supreme Court of Appeals had reviewed the orders of the Commission or until the time for taking such review had passed, then the bill in this case must be held premature. However counsel seek to escape this evident conclusion by distinguishing the Prentis case. The claimed distinction is that the rates ordered by the Commission in that case were not operative when those bills were filed because there had been no publication of the rates as required by law; while here, the order of the Commission was effective pending the appeal. It may, or may not, be that the Supreme Court might have based its conclusion that the bills were premature upon the fact that the rates had not been published when the bills were filed. What that court might have done there is answered by what it did. The lack of publication of the rates had absolutely nothing to do with and is not even mentioned in the statement of the reasons why the court thought those bills premature. The sole reason stated why the court regarded those bills premature was because the legislative process of rate making had not become final, either by determination of the review provided by the Virginia law or by failure to seek review

487 within the time allowed by such law. No other reason is anywhere suggested in the majority opinion. This thought is expressed three separate times in connection with that many different phases of the case. The first of these expressions (p. 230) is in connection with the general aspect of the matter and is as follows:

"The State of Virginia has endeavored to impose the highest safeguards possible upon the exercise of the great power given to the State Corporation Commission, not only by the character of the members of that commission, but by making its decisions dependent upon the assent of the same historic body that is entrusted with the preservation of the most valued constitutional rights, if the railroads see fit to appeal. It seems to us only a just recognition of the solicitude with which their rights have been guarded, that they should make sure that the State in its final legislative action would not respect what they think their rights to be, before resorting to the courts of the United States.

If the rate should be affirmed by the Supreme Court of Appeals and the railroads still should regard it as confiscatory, it will be understood from what we have said that they will be at liberty then to renew their application to the Circuit Court, without fear of being met by a plea of *res judicata*. It will not be necessary to wait for a prosecution by the Commission."

The second of these expressions is in connection with the claim, of certain of those complainants, that the State had bound itself by contract not to reduce the rates. The Court said (p. 231):

"If the State has bound itself by contract not to cut down the rates as contemplated, there would seem to be no reason why the suit should not be entertained now. See *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362, 393. But it would be premature and is unnecessary to decide whether the State has done so or not. No rate is irrevocably fixed by the State until the matter has been laid before the body having the last word. It may be that that body will adhere to the old rate or will establish one that will not be open to the charge of violating the contracts alleged. The contracts alleged do not prohibit a certain reduction if the profits heretofore realized have exceeded a certain amount. On the question of contract as on that of confiscation it is reasonable and proper that the evidence should be laid, in the first instance, before the body having the last legislative word."

The third expression was in connection with the suggestion that the time for taking the review from the Commission had expired (at the time the opinion was filed). To meet that situation, the court said (p. 232):

"As our decision does not go upon a denial of power to entertain the bills at the present stage but upon our views as to what is the most proper and orderly course in cases of this sort when practicable. it seems to us that the bills should be retained for the present  
488 to await the result of the appeals if the companies see fit to take them. If the appeals are dismissed as brought too late the companies will be entitled to decrees. If they are entertained and the orders of the commission affirmed, the bills may be dismissed without prejudice and filed again."

Not only is the opinion in the *Prentis* case very clear as to the reason for the decision of the court, but the Supreme Court has, in the case of *Bacon v. Rutland R. R. Co.*, 232 U. S. 134, 137, stated the scope of the *Prentis* case as follows:

"The defendants rely upon *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210, 229, 230. The ground of that decision was that by the state constitution an appeal to the Supreme Court of Appeals from an order of the State Corporation Commission fixing rates was granted, with power to the Court to substitute such order as in its opinion the Commission should have made. The Court was given legislative powers, and it was held that in the circumstances it was proper, before resorting to the Circuit Court of the United States, to make sure that the officials of the State would try to establish an unconstitutional rule. But it was laid down expressly that at the judicial stage the railroads had a right to resort to the courts of the United States at once. p. 228. Therefore before that case can apply

it must be established at least that legislative powers are conferred upon the Supreme Court of the State of Vermont."

Also see *Detroit & Mackinac Ry. v. Michigan R. R. Commission*, 235, U. S. 402, 404.

In view of the above, I am unable to find any basis for the distinction which counsel urge with commendable zeal and ability. It is true that an appellate court may disregard the reasoning of a trial court and reach the same conclusion in its own way; but, when the highest court has arrived at a given result by a clearly defined path, that same result must be reached by all lower courts which find that path before them. The circumstances that the Supreme Court had before it another path to the same end and did not take it, emphasizes the choice of the one taken.

489 COTTERAL, *District Judge* (concurring):

The Prentis case settled all controversy as to the right of suit against confiscatory rates imposed by state tribunals, although vested with judicial functions in another capacity. It was also held in that case that the stage at which injunction may appropriately interfere, from a standpoint of comity, is when the rates become a finality by the action of the reviewing court, in the exercise of legislative authority, upon appeal effectually taken, and that meantime a bill assailing rates in a Federal Court will be premature and should be dismissed, with leave to renew it, if the rates should be affirmed. In these cases before us, the appeals were legally taken to the State Supreme Court, and have been awaiting appellate review, in due order, during the pendency of the motions for preliminary injunctions in this court, and it develops have been argued and submitted for decision by that court.

The Prentis case differs from these in the fact that here the rates complained of are in force and those prescribed by the Virginia Commission were not, and the question presented to us at the outset in these cases is whether the rule of comity should be given in the present situation. In other words, whether it must give way to the application of the fixed doctrine, under the Constitution of the United States, that rates imposed upon utility companies which do not yield a fair return on the reasonable value of property devoted to public use cannot be upheld because wanting in due process of law. (*Wilcox v. Consolidated Gas Co.* 212 U. S. 41.)

In the case of *Love v. A. T. & S. F. R. Co.*, 185 Fed. 321, a temporary injunction was sustained on appeal, where an arbitrary fiat of the State Constitution reduced the passenger rates of railroads without any privilege of appeal, and the State Commission reduced the freight rates and supersedeas was denied, during the pendency of appeal. Are there circumstances in this case which require a different result?

490 I have finally reached the conclusion that the answer should be in the affirmative. In the first place, the State Supreme Court, in the case of the Oklahoma Natural Gas Company,

while doubting authority for a supersedeas, has rested a denial of it on the ground that there was an insufficient showing by the gas companies. Putting aside the supposed effect of this decision, illustrative of the views of that court, as an adjudication, the allowance of a temporary injunction necessarily involves a review and revision of the same. This the properties would hardly sanction, if it is avoidable. The appeals will doubtless have precedence and be disposed of promptly, under the mandate of the State Constitution (Art. 9, Sec. 21), and be determined perhaps approximately as soon as our decision may be reached on the full showing before us, which might be in vain and would be so, should there be a modification of existing rates. It must be considered that the complaint here is not of a direct reduction of rates but a refusal to adequately lift those alleged to have become non-remunerative. There is the analogy of a temporary withholding of relief in a Federal Court by a writ of habeas corpus to a petitioner under accusation by State authority, as mentioned in the Prentis case.

Finally, it is urged justifiably that if the plaintiffs shall prevail in the State Supreme Court, not only is the present action by the court meantime presumably correct (*Des Moines Gas Co. v. Des Moines*, 238 U. S. 163), but that court has the duty to substitute such order as the Commission should have made at the time (*Oklahoma Const.*, A-t. 9, Sec. 23), and in this way restore to the complainants such compensation as they may be entitled to and may have temporarily lost by the rulings of the Commission.

From these considerations, the temporary injunctions in these cases should be denied as prematurely sought, and I therefore concur in the decision to that effect.

491 In the District Court of the United States for the Western District of Oklahoma.

No. 496. Equity.

OKMULGEE GAS COMPANY, Plaintiff,

v.

CORPORATION COMMISSION OF STATE OF OKLAHOMA et al.,  
Defendants.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, Plaintiff,

v.

CAMPBELL RUSSELL et al., Defendants.

No. 502. Equity.

OKLAHOMA GAS AND ELECTRIC COMPANY et al., Plaintiffs,

v.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.,  
Defendants.

(POLLOCK, J., dissenting:)

The above suits were brought to restrain the enforcement of orders of Corporation Commission of the State of Oklahoma on the ground compliance therewith by complainants will work a confiscation of the property of complainants, destroy their business and bring  
492 them to bankruptcy. Restraining orders on reasonable terms and conditions have been granted to complainants, are now in full force, and the matter stands fully heard, argued and submitted on voluminous proofs and arguments of solicitors for temporary injunctions.

At the threshold of these cases we are confronted by the contention on the part of defendants therein these suits are prematurely brought for that at the time the orders of temporary injunction were applied for, and now, the legislative power by the State ordained for the fixing and establishing of the rates for service sought to be enjoined had not been fully completed and ended, and the case of *Prentiss v. Atlantic Coast Line*, 211 U. S. 210, is cited and relied upon as conclusive of this contention, and such is the view adopted by a majority of this Court. That case arose in the State of Virginia. The provisions of the Constitution of Virginia under which the controversy arose are conceded to be identical or like those of the State of Oklahoma involved in this controversy, which confers legislative as well as judicial powers upon the Supreme Court of the State in rate-

making cases on an appeal to the Supreme Court from an order of the Corporation Commission fixing rates.

It has been many times held and is the settled law of this country the facts of any given case defines the nature and fixes the principles of the law of decision applicable thereto. Of necessity, it follows, any principle of the law declared in any given case not applicable to or based upon the peculiar facts of that case is merely obiter dictum, decides nothing, binds no one, and may be safely ignored as furnishing no binding precedent.

Applying this principle of the law to the facts of the Prentis case, and what is found decided therein? Namely, the obvious and conceded principle of the law that no injunctive relief will be granted by a court of equity against the threatened enactment of a law, no matter how disastrous or oppressive such law may become if once enacted and established as the law of the land. That such were

the facts of the Prentis case is apparent from the statement  
493 thereof made by Mr. Justice Holmes, as follows:

"These are bills in equity brought in the Circuit Court to enjoin the members and clerk of the Virginia State Corporation Commission from publishing or taking any other steps to enforce a certain order fixing passenger rates."

Under the law of Virginia then in force the order of the Corporation Commission of that State, like the many legislative acts of the various states, had no binding force or effect as law until publication thereof had been made. In other words, the publication of the order of the Commission in that case was a necessary preliminary legislative step in the enactment of the law before enforcement thereof became possible. It is true, the right of the railway companies affected by the order of the Commission to apply to the Supreme Court of Appeals of that State sitting in its legislative capacity for a review of the order of the Commission, and the failure of the railway companies to take such appeals prior to the institution of that suit, is much commented upon by the court in its opinion. But, in its last analysis, that which was sought to be restrained in that case by the railway companies was the completion of the exercise of legislative power in the making of a law and not the administrative power employed in enforcing a confiscatory law once fully made complete and in full force and effect until set aside by some additional legislative body sitting with power to review and unmake the legislative enactment. How different, it seems to me, are the facts in the cases at bar. Here, the legislative body created by the State of Oklahoma, sitting with full power to enact into law the rates in question, did enact orders into laws of the State with full operation and power of enforcement against complainants by severe penalties for noncompliance therewith. It is true, in the cases at bar, as in the Prentis case, complainants had the right of appealing to the Supreme Court of the State of Oklahoma sitting under the Constitution of that State not as a court exercising judicial power, but as an additional legislative body created for a review and correction of the legislative

acts or orders of the Commission. However, such appeals  
494 were taken by complainants in the instant cases and a suspension of the enforcement of the orders made by the Commission as law during the pendency of such appeals was applied for but denied by the Supreme Court of this State, thus leaving complainants remediless at law and subject to the full and complete enforcement of the orders of the Commission as law, unless enjoined, until final review had by the Supreme Court.

Now it is quite positively charged in the bills of complaint that the operation of these orders of the Commission, if obeyed by complainants until the Supreme Court of the State can or will act in the matter of review will work a confiscation of the property of complainants, ruin their business, and bring them into bankruptcy. On the other hand, if complainants take the hazard of violating these orders so made by the Commission until the Supreme Court shall pass upon them in review, and the orders shall be ultimately upheld, the fines and penalties of the law which will be enforced against them will be so great and burdensome as to bring ruin and disaster to the property and business of complainants. Thus, the question presented in these cases is not one of interference with the course of legislative proceedings in the enactment of rate laws, (as was the Prentis case) nor is it one of interference with the course of judicial proceeding in a court of the State, such as is prohibited by section 720 of the Revised Statutes, but it is a case of the right of a citizen to apply to a court of equity having full jurisdiction and power over the subject-matters of the suits and the parties thereto to temporarily restrain the enforcement of the orders of the Commission, which are a part of the body of the laws of the State, against the confiscation of their property, the ruin of their business, and certain ensuing bankruptcy, unless and until the law-making power of the State may be induced to change the orders and relieve complainants from such disaster. This right of complainants to hearing, determination and temporary orders of injunction now stands denied them.

495 To my mind, such a ruling, fraught with such consequences as must under the averments of the bills of complaint surely follow in these cases, should not be made in a court of conscience unless thereto conclusively impelled by controlling precedent and authority. That under its facts the Prentis case does not absolutely control the decision of the present cases I have endeavored to show. There can be no doubt, whatever, any Federal Court of the country, with the present understanding of the law, would have reached the same ultimate conclusion attained in the Prentis case, and for the all sufficient reason the order of the Virginia Commission in that case attempted to be restrained by complainants, in operation and enforcement against them, at no time during the pendency of the litigation had attained to the dignity of a law; hence there was no enforcement possible, nothing to restrain. To my mind, the test to apply in cases of this character, is this:

Has the order of the Commission, acting as a legislative body, reached that point whereat it has become a part of the enforceable body of the law of the State, the disobedience of which entails heavy

and drastic punishments, or, the observance thereof works confiscation of property? That this is the true test which must be applied is made to appear by a consideration of a few of the adjudicated cases. Thus, in *Bacon v. Rutland R. R. Co.* 232 U. S. 134, cited in the majority opinion, Mr. Justice Holmes who wrote the opinion of the Court in the *Prentis* case, said:

"The Court was given legislative powers, and it was held that in the circumstances it was proper, before resorting to the Circuit Court of the United States, to make sure that the officials of the State would try to establish an unconstitutional rule. But it was laid down expressly that at the judicial stage the railroads had a right to resort to the courts of the United States at once."

In the well considered case of *Love v. Atchison, T. & S. F. Ry. Co.*, the Circuit Court of Appeals for this Circuit, 185 Fed. 327, Sanborn, C. J., delivering the opinion, said:

496 "The legislative function in rate-making looks to the future and determines what future rates shall be. But when rates, either tentative or final, have been put and are maintained in actual operation under penalty of severe fines, the question whether or not their effect is to take the property of the railroad companies affected thereby without just compensation is a judicial one, conditioned by past or present facts, and the national courts cannot be deprived of jurisdiction of it by the fact that the process of making the tentative rates is yet incomplete. It is as clear a violation of the Constitution, and one as promptly remediable in the national courts, to take the property of a railroad company without just compensation by the enforced operation of tentative rates during the process of their making as by the operation of final rates after that process is complete. Railroad companies that have been, are, or will be deprived of parts of their property devoted to the public use of transportation without just compensation during the continuance of the rate-making process by provisions of a state Constitution, or of a state law, or by orders of a state commission, prescribing tentative rates and putting them in effect during the rate-making process under severe penalties, may maintain suits for and obtain relief by injunction during the continuance of the rate-making process to the same extent that they may after the process is completed. These suits were not prematurely brought."

In all reason, I think it must be conceded the confiscation of the property of a citizen through the temporary enforcement of a rate which has reached the stage of an enforceable law or order is equally violative of the National Constitution with that of the confiscation of property by the enforcement of a permanent law. Hence, in its ultimate analysis and end, it must be held beyond the power of any State of this Union by the manner it ordains for the enactment of its rate-making laws to place beyond the reach of the courts of equity of the country the power to impose a restraining hand between the oppression and tyranny of the operation of confiscatory laws during

a prolonged course of the making of rate-law after such laws have reached the stage of completion whereat they become enforceable as laws, and by the citizen must be either obeyed, to his ruin, or disobeyed, at his peril. Ex parte Young, 209 U. S. 123; Wilcox v. Consolidated Gas Company, 212 U. S. 19; St. Louis Iron Mt. & Southern Ry. Co. v. Williams, 251 U. S. 63.

For the foregoing reasons I cannot agree with but dissent from the majority opinion.

JOHN C. POLLOCK,  
*Judge.*

497      Endorsed: Filed in District Court May 13, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

498      In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

VS.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and S. P. Free-ling, Attorney General of Oklahoma, and the City of Tulsa, a Municipal Corporation, and Frank E. Duncan, Its City Attorney, and the City of Sapulpa, a Municipal Corporation, and Leroy J. Burt, Its City Attorney, Defendants.

*Application for Supersedeas.*

Now comes the Oklahoma Natural Gas Company, complainant herein and respectfully shows to the court that it intends in good faith, and with the utmost expedition possible, to take an appeal to the Supreme Court of the United States from the decree rendered and entered in this action by this court on April 27, 1922, denying the temporary injunction against the enforcement of order No. 1886 made by the Corporation Commission of Oklahoma prescribing rates to be charged by this complainant for natural gas; and that complainant has already prepared and filed its petition for appeal and assignments of error herein, and that complainant intends to have the record prepared and filed in the Supreme Court of the United States and to move for the advancement and early determination of said appeal in said court.

499      Complainant further shows that on December 19, 1921, this court granted a temporary restraining order, temporarily restraining the enforcement of order No. 1886, and thereupon this complainant put into effect the increased rates permitted under said temporary restraining order, and under said increased rates

this complainant has charged and collected a sum of money in excess of what it could have charged and collected under the rates prescribed in order No. 1886 amounting to between \$400,000 and \$500,000, which this complainant would be required to refund to its consumers in the event said temporary restraining order should be dissolved and in the event a supersedeas should be denied this complainant herein.

Complainant further shows that the rates prescribed by order No. 1886 of the Corporation Commission of Oklahoma, which became effective on July 1, 1921, were and are confiscatory, and the enforcement of the same operated and will operate to deprive this complainant of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States; complainant operated under said rates from July 1, 1921, until December 19, 1921; and applying the said rates to the business done by complainant from July 1, 1921, to December 31, 1921, being a period of six months, resulted in an excess of operating and maintenance expenses over gross income in the sum of more than \$93,000, thus depriving complainant of any earning for depreciation upon its property, and of any earning for the purpose of amortizing its property against the time when the natural gas is exhausted and the said property will become worthless, and also depriving complainant of any profit or return upon its said property, but on the contrary causing it to render its service wholly uncompensated, and to suffer an actual operating loss of more than \$93,000.

Complainant further states that the supply of gas available to it has been constantly diminishing, caused by the depletion and  
500 diminution in the supply of gas; that it has been and is being required to expend annually a sum of money approximating \$1,500,000 in building new gas pipe lines in order to reach new gas fields so as to be able to furnish a constantly diminishing supply of gas to the patrons whom it was already obligated to serve; and since and including the year 1917 it has spent more each year in an effort to obtain and furnish gas than its gross receipts have been. It has been and is being required continually to pyramid its capital account, and it has been and is doing continually a smaller volume of business.

Complainant's income during the past two years has been so small that, in order to build the necessary new lines to new fields so as to be able to continue to furnish gas to its patrons, and in order to pay its maintenance and operating expenses, complainant in the year 1921, incurred a current indebtedness of \$1,662,000, most of which represented borrowed money on short time notes, which the directors of said company were required to endorse before the money could be borrowed. This was in addition to complainant's funded indebtedness. A portion of said current indebtedness is due at this time, a portion in June, 1922, and the remainder in August, 1922. Complainant's sales of gas during the summer time are negligible, and do not pay operating expenses, due to the fact that in the summer time its customers and patrons are not heating their homes, but use merely a pittance of gas for cooking purposes; and practically com-

plainant's entire income is made and earned during the winter months of each year. If the restraining order heretofore granted by this court should be dissolved, and if a supersedeas should be denied complainant, and if complainant should be required to rebate to its customers or patrons the excess collected over the rates prescribed by

501 said Corporation Commission since the granting of said restraining order, complainant would be wholly unable to make said rebates or refunds and at the same time pay any amount upon the indebtedness which it has incurred in undertaking to furnish gas to the public; and with the summer season before it, during which time its operations even at the rates charged under said restraining order will necessarily be at a deficit, the situation confronting complainant is critical and desperate, especially considering the fact that additional expenditures will have to be made during the coming summer in building new lines to new gas fields, in drilling additional gas wells, and in building additional compressor stations, or else the supply of gas during the coming winter will be wholly and grossly inadequate. And unless complainant can make some payments upon the indebtedness due by it, it will be unable to procure extensions of time on its said debts.

Complainant further states that under such circumstances it will be unable to build any new gas lines to new fields during the summer, and will be unable to erect any additional compressor stations, and will be unable to do any additional drilling, and it will be wholly unable to give gas service during the coming winter, all of which would be not only disastrous, but also seriously detrimental to the health, comfort and convenience of the public which it serves.

Complainant further shows that the order or decree of this court denying said temporary injunction is one proper to be reviewed by the Supreme Court of the United States. One of the Judges who participated in said hearing has dissented from said order or decree. The question is one of constitutional law. The amount involved is large. The solvency of this complainant is involved, and also its ability to perform the public service. And if the Supreme Court of the United States should reverse the order and decree of this court denying said temporary injunction, then the same would be an adjudication that this complainant was entitled to the temporary

502 restraining order at the time the same was granted, and was and is entitled to the temporary injunction; and under such circumstances, if said temporary restraining order should not be continued in force pending said appeal, but should be dissolved, and if complainant should be required to make said rebates in advance of the determination of said appeal, then complainant's property will have been taken without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, without the possibility of complainant's recovering same, and great and irreparable injury will have been done to the complainant, for the reason that under such circumstances complainant could never recover any part of the money so wrongfully and unlawfully required to be refunded to its patrons and could never recover reasonable

remuneration for the services which it will have been required to render during the pendency of said appeal.

Wherefore, the premises considered, complainant prays that this honorable court will make and enter an order granting this complainant a supersedeas, suspending the dissolution of said temporary restraining order, and continuing the same in force during the pendency of said appeal, and suspending the requirement for refunding or rebating the amounts collected under said restraining order and fixing the amount of the bond to be given by complainant for said supersedeas.

AMES, CHAMBERS, LOWE &  
RICHARDSON,  
*Attorneys for Complainant.*

503 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Plaintiff,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Affidavit.*

R. C. Sharp, on his oath, states that he is Vice President of the Oklahoma Natural Gas Company, plaintiff herein, and is active in the management of the affairs of said company. He further states that under Order No. 1886 of the Corporation Commission of Oklahoma, which became effective on July 1, 1921, the Oklahoma Natural Gas Company's operating and maintenance expenses and taxes exceeded its gross income up to December 31, 1921, being a period of six months, by more than \$93,000.00, thus causing an actual deficit in the operation of said company of more than \$93,000.00.

Affiant further states that the supply of gas available to the Oklahoma Natural Gas Company has been constantly diminishing; that said company has been and is being required to expend annually in building new gas lines to new gas fields, in order to furnish a constantly diminishing supply of gas to the patrons whom it was already obligated to serve, a sum of money approximating \$1,500,000.00. Since and including the year 1917, said company has spent more each year in an effort to obtain and furnish gas to its consumers than it has collected. It has been and is being required continually to pyramid its capital account, and it has been and is continually doing a smaller volume of business.

Affiant further states that the income of the Oklahoma Natural Gas Company has been so small that, in order to build the necessary new lines to new fields in order to continue to be able to furnish a

supply of gas, and in order to pay its maintenance and operating expenses, the Oklahoma Natural Gas Company in the year 1921, in addition to its funded indebtedness, incurred a current indebtedness of \$1,662,000.00, most of which represented borrowed money on short time notes, which the directors of said company were required to endorse before the money could be borrowed. Affiant further shows that a portion of said indebtedness is due at this time, a portion in June 1922, and the remainder in August 1922. Affiant further states that its receipts during the summer time are negligible and do not pay operating expenses, due to the fact that in the summer time its customers and patrons are not heating their homes, but use merely a pittance of gas for cooking purposes, the receipts from which will not even pay operating expenses; and that practically the entire income of the plaintiff is made and earned during the winter months each year. Affiant further states that if the restraining order heretofore granted by this Court should be dissolved and if the plaintiff should be required to rebate to its consumers or patrons the difference between the amounts collected from them since the granting of said restraining order under the rates charged and what would have been collected under the rates prescribed by the order of the Corporation Commission, then this complainant would be required to make rebates approximating the sum of \$600,000.00. This affiant further states that the Oklahoma Natural Gas Company would be wholly unable to make said rebates and at the same time pay any amount upon the indebtedness which it has incurred in undertaking to furnish gas to the public, and that with the summer season before it, during which time its operations will necessarily be at a deficit, the situation confronting said plaintiff is critical and desperate, especially considering the fact that additional expenditures will have to be made during the coming summer in building new lines to new gas fields, in drilling additional gas wells, and in building additional compressor stations, or else the supply of gas during the coming winter will be wholly inadequate. Affiant further states that unless it can make some payments upon the indebtedness due by it, it would be unable to procure extensions of time on its said debts.

Affiant further states also that under such circumstances the Oklahoma Natural Gas Company would be unable to build any new gas lines to new gas fields during the summer, and would be unable to erect any additional compressor stations, and would be unable to do any additional drilling, and would be wholly unable to give gas service during the coming winter, all of which would be not only disastrous to said Oklahoma Natural Gas Company, but injurious to the public.

Affiant further states that it is the bona fide intention of the Oklahoma Natural Gas Company immediately to take an appeal to the Supreme Court of the United States from the order and decree of this Court denying a temporary injunction herein; and that it is the bona fide intention of the Oklahoma Natural Gas Company not only to complete said appeal, but also file the record in the Supreme Court of the United States within thirty days from this date; and that it is

the intention of the Oklahoma Natural Gas Company immediately to move for the advancement of said appeal in said Supreme Court of the United States, and to procure a decision therein, if possible, before said court adjourns for its summer vacation, and if not by that time, then at the beginning of the next October term of said court.

Affiant further shows that the decision of this Court is one proper to be reviewed by the Supreme Court of the United States, and that if the Supreme Court of the United States should reverse the order and decree of this Court denying said temporary injunction, then the same would be an adjudication that this plaintiff was entitled to the temporary restraining order at the time the same was granted, and that this plaintiff was and is entitled to a temporary injunction; and that under such circumstances if said temporary restraining order should not be continued in force pending said appeal, but should be dissolved, and the plaintiff should be required to make said rebates in advance of the determination of said appeal, a great and irreparable injury will have been done to the plaintiff, for the reason that under such circumstances the plaintiff could never recover any part of the money so wrongfully and unlawfully required to be refunded to its patrons.

(Signed)

R. C. SHARP.

Subscribed and sworn to before me on this the 28th day of April, 1922.

C. A. O'DONOVAN,  
*Notary Public.*

My commission expires August 11, 1925.

Endorsed: Filed in District Court May 1, 1922. Arnold C. Dolde,  
Clerk.

506 In District Court of United States for Western District of  
Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS Co., a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Motion.*

The defendants herein—the temporary restraining order herein having expired and been dissolved by reason of the entry of judgment on application for interlocutory injunction—move that the Court adjudge that the complainant refund to its customers the difference between the rates collected by it during the effectiveness of such restraining order and the rates in effect by order of the Corporation Commission of Oklahoma during the period such restrain-

ing order was in effect; and that the Court adjudge liability upon the bonds herein; and fix and provide the method and terms upon which such refund shall be made.

E. S. RATLIFF,  
HENRY G. SNYDER,  
*Attys. for Defendant.*

Endorsed: Filed in District Court May 4, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

507 In the District Court of the United States for the Western District of Oklahoma.

No. 501. In Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL et al., Defendants.

*Order.*

On this 4th day of May, 1922, there comes on to be heard the application heretofore filed by the complainant, Oklahoma Natural Gas Company, for a supersedeas herein, and also the motion heretofore filed by the defendants herein for an order requiring the complainant to make refund to its patrons of the amounts by it collected for gas furnished in excess of the amounts which it would have collected under the rates prescribed by the Corporation Commission of Oklahoma in its order No. 1886. The complainant appears by its attorneys, Ames, Chambers, Lowe & Richardson; and the defendants appear by their attorneys, E. S. Ratliff, Henry G. Snyder, I. J. Underwood and A. J. Biddison. And the court having heard complainant's application for a supersedeas and having heard argument of counsel thereon, and being well and sufficiently advised in the premises, upon consideration thereof:

It is ordered that the motion of complainant to supersede the order of the court of April 27, 1922, denying an interlocutory injunction and to continue in effect and operation the restraining order granted on December 19, 1921, pending the appeal of this cause to  
508 the Supreme Court of the United States is denied, and the motion of the defendants that complainant at this time be required to make refund of the excess amounts collected during the continued effectiveness of the restraining order is likewise denied, and the motion of the complainant that the making of the refund pursuant to the terms of its bonds heretofore given conditioned upon the giving of which the restraining order was granted and continued effective and operative, is granted upon condition that the complainant shall execute to the State of Oklahoma for the use and benefit of its patrons, and to be approved by the court, a bond in the principal

sum of Three Hundred Thousand (\$300,000.00) Dollars in addition to all bonds heretofore given, cumulative in effect, conditioned that it will prosecute its appeal with diligence and to effect, and that it will, in event the Supreme Court of the United States shall fail to reverse the order of this court denying an interlocutory injunction, promptly thereupon make refund of all amounts collected by the complainant in excess of the rates prescribed by the Corporation Commission of Oklahoma in its order No. 1886, due to the effectiveness of the restraining order, and further conditioned that if pursuant to the mandate of the Supreme Court of the United States on appeal it shall hereafter be ordered that a temporary interlocutory injunction issue conditioned that the complainant shall collect rates less than those expressed in the restraining order of December 19, 1921, aforesaid, then that the complainant will make prompt refund of the aggregate excess by it collected during the effectiveness of the restraining order, plus interest at the rate of six per cent per annum over and above the maximum rates expressed in such temporary injunction.

509 It is further by the court ordered that upon the filing and approval of the bond hereinbefore provided for, then the making of said refunds by the complainant shall be and the same hereby is stayed pending the determination of complainant's appeal in the Supreme Court of the United States, and complainant shall be entitled to collect for the gas by it sold and furnished up to the time of the denial of said temporary injunction at the rates charged under said restraining order.

JOHN H. COTTERAL,  
*Judge.*

O K as to form:

AMES, CHAMBERS, LOWE &  
RICHARDSON,  
*Attorneys for Complainant.*

E. S. RATLIFF,  
HENRY G. SNYDER,  
*Attorneys for Defendants.*

Endorsed: Filed in District Court May 4th, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

510 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL et al., Defendants.

*Bond.*

Know all men by these presents:

That the Oklahoma Natural Gas Company, a corporation, as principal, and Fidelity & Deposit Company of Maryland, a corporation, as surety, do hereby acknowledge themselves and each of them jointly and severally indebted unto the State of Oklahoma in the principal sum of Three Hundred Thousand (\$300,000.00) Dollars, for the payment of which well and truly to be made according to the terms and conditions hereof we do hereby bind ourselves, our successors and assigns, firmly by these presents.

This bond is conditioned, however.

That, whereas, on December 12, 1921, the above named Oklahoma Natural Gas Company filed in the United States Court for the Western District of Oklahoma its bill in equity for the purpose of enjoining the enforcement of the rates to be charged by it for gas prescribed by the Corporation Commission of Oklahoma in its order No. 1886, and on December 19, 1921, procured a temporary restraining order, which was subsequently continued in force until the hearing  
511 and determination of the application for a temporary injunction, which temporary restraining order restrained said Corporation Commission of Oklahoma and the members thereof and the other defendants therein named from enforcing the said rates prescribed in said order No. 1886, and upon the granting of said restraining order the said Oklahoma Natural Gas Company charged a city gate rate for gas ten cents per thousand higher than that prescribed in said order No. 1886, and a distribution rate for gas twenty cents per thousand higher than that prescribed in said order No. 1886; and

Whereas, on April 27, 1922, the said United States Court made an order denying the temporary injunction sought in said action by said Oklahoma Natural Gas Company; and,

Whereas, between said December 19, 1921, and said April 27, 1922, there was collected by and did accrue to said Oklahoma Natural Gas Company under said increased rates so charged a sum of money in excess of what would have accrued to it under the rates prescribed by said Corporation Commission approximating Six Hundred Fifty Thousand (\$650,000.00) Dollars; and

Whereas, said Oklahoma Natural Gas Company has appealed to the Supreme Court of the United States from said order denying

said temporary injunction, and has procured an order of said court staying the refunding of the sums accruing to and collected by it in excess of those which would have accrued to and would have been collected by it under said order of said Corporation Commission:

Now, therefore, in the event said Oklahoma Natural Gas Company shall not prosecute its said appeal with diligence and to effect, and in the event it shall not procure the said Supreme Court of the United States to reverse the said order of said United States District

512 Court denying the said temporary injunction, then the said Oklahoma Natural Gas Company shall make prompt refund to each and all of its consumers and patrons of the sums by it collected in excess of the rates prescribed by said Corporation Commission for all gas sold by it to its patrons between said December 19, 1921, and April 27, 1922.

And further, if the said Oklahoma Natural Gas Company by and through said appeal shall procure a temporary injunction to be granted conditioned, however, that the rates which it shall charge shall be less than those charged under said restraining order, then said Oklahoma Natural Gas Company shall make prompt refund of the sums of money so collected by it in excess of the amount which would have been collected at the rates so prescribed in said temporary injunction, plus interest thereon at the rate of six per cent per annum.

And further, in the event a temporary injunction shall be granted, and shall thereafter be finally vacated, then in such event the said Oklahoma Natural Gas Company shall make prompt refund of the sums by it collected in excess of the rates which shall be determined to have been the lawful rates, plus interest thereon at the rate of six per cent per annum.

The said obligation to refund in such event shall be for the use and benefit of those from whom such excess rates so to be refunded shall have been collected or received.

This bond is not in lieu of, but is in addition to the three bonds heretofore given, which three bonds aggregate \$420,000.00, and the liability on this bond is intended to be cumulative and in addition to the liability on said three other bonds.

Now if the said Oklahoma Natural Gas Company shall well and truly keep, perform and fulfill the covenants and undertakings hereinabove expressed, then in such event this bond shall be and become null and void; otherwise the same shall be and remain in full force and effect.

513

Executed and delivered this 5th day of May, 1922.

OKLAHOMA NATURAL GAS COMPANY,  
*Principal,*

By D. A. RICHARDSON,  
*Its Attorney of Record.*

FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND,

*Surety,*

By D. NEWELL JONES,  
*Its Attorney in Fact.*

[SEAL.]

O. K.

D. A. RICHARDSON,  
*Attorney for Complainant.*

E. S. RATLIFF,  
*Attorney for Defendants.*

Approved May 5, 1922.

JOHN H. COTTERAL,  
*District Judge.*

Endorsed: Filed May 5th, 1922. Arnold C. Dolde, Clerk. By  
F. G. Offutt, Deputy.

514 In the District Court of the United States for the Western  
District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Stipulation for Substitution of Parties.*

Honorable S. P. Freeling, formerly Attorney General of the State of Oklahoma and one of the defendants in the action above entitled, having resigned his said position since the institution of this action, and Honorable George F. Short having been appointed Attorney General of the State of Oklahoma in the place and stead of said S. P. Freeling, and the said George F. Short declaring his intention to take all legal steps to enforce said Corporation Commission's order No. 1886:

It is therefore stipulated by and between the plaintiff and said George F. Short that the said George F. Short, now Attorney General of the State of Oklahoma, may be substituted as a party defendant in the above entitled action in the place and stead of the defendant S. P. Freeling, and that as to the defendant S. P. Freeling this action

may be dismissed. And the said George F. Short hereby enters his appearance in said action, and waives the service of process upon him.

AMES, CHAMBERS, LOWE &  
RICHARDSON,  
*Attorneys for Complainant.*  
GEORGE F. SHORT.

Endorsed: Filed in District Court May 5th, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

515 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL et al., Defendants.

*Stipulation for Substitution of Parties.*

The term of office of the Honorable Frank E. Duncan, formerly City Attorney of the City of Tulsa, and one of the defendants in the action above entitled, having expired, and I. J. Underwood having been appointed City Attorney of the City of Tulsa in the place and stead of said Frank E. Duncan, and having duly qualified and entered upon the discharge of his duties, and the said I. J. Underwood declaring his intention to take such legal steps as may be possible to enforce said Corporation Commission's order No. 1886:

It is therefore stipulated by and between the plaintiff and the said I. J. Underwood as such City Attorney of the City of Tulsa, that the said I. J. Underwood, now City Attorney of the City of Tulsa, may be substituted as a party defendant in the above entitled action in the place and stead of the defendant Frank E. Duncan, and that as to the defendant Frank E. Duncan this action may be dismissed. And the said I. J. Underwood hereby enters his appearance in said action, and waives the service of process upon him.

AMES, CHAMBERS, LOWE &  
RICHARDSON,  
*Attorneys for Complainant.*  
I. J. UNDERWOOD.

Endorsed: Filed in District Court May 5th, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

516 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL et al., Defendants.

*Order Substituting Parties Defendant.*

It being shown to the court that since the institution of this action S. P. Freeling has resigned as Attorney General of the State of Oklahoma, and George F. Short has been appointed and has qualified as such Attorney General in the place and stead of S. P. Freeling; and it further being shown to the court that the term of office of Frank E. Duncan as City Attorney of Tulsa, Oklahoma, has expired, and that I. J. Underwood has been appointed City Attorney of said city in the place of said Frank E. Duncan; and it being stipulated by and between the complainant and the above named George F. Short and I. J. Underwood that the said George F. Short and I. J. Underwood may be substituted as parties defendant in the place and stead of S. P. Freeling and Frank E. Duncan respectively:

It is therefore by the court ordered that George F. Short as Attorney General of Oklahoma and I. J. Underwood as City Attorney of the City of Tulsa be and they are hereby substituted as parties defendant in the above entitled and numbered action in the place and stead respectively of S. P. Freeling and Frank E. Duncan.

JOHN H. COTTERAL,  
Judge.

Endorsed: Filed in District Court May 5th, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

517 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

VS.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and S. P. Freeling, Attorney General of Oklahoma, and The City of Tulsa, a Municipal Corporation, and Frank E. Duncan, Its City Attorney, and The City of Sapulpa, a Municipal Corporation, and Leroy J. Burt, Its City Attorney, Defendants.

*Petition for Appeal.*

To the Honorable John H. Cottrell, District Judge:

The above named complainant, Oklahoma Natural Gas Company, a corporation, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 27th day of April 1922, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith, and it prays that its said appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States sitting in the City of Washington in the District of Columbia under the rules in such cases made and provided; and that the court make the proper orders relating to the security to be required of this petitioner.

AMES, CHAMBERS, LOWE &  
RICHARDSON,  
*Attorneys for Complainant.*

Endorsed: Filed in District Court May 5th, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

518 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and S. P. Freeling, Attorney General of Oklahoma, and The City of Tulsa, a Municipal Corporation, and Frank E. Duncan, Its City Attorney, and The City of Sapulpa, a Municipal Corporation, and Leroy J. Burt, Its City Attorney, Defendants.

*Assignments of Error.*

Now comes the complainant in the above entitled cause, and files the following assignments of error, upon which it will rely in its appeal in said cause from the decree rendered by this honorable court on April 27, 1922, to-wit:

First. The District Court of the United States for the Western District of Oklahoma erred in denying complainant's application for a temporary injunction.

Second. The District Court of the United States for the Western District of Oklahoma erred in not granting to this complainant on motion heretofore filed and the affidavits filed in support thereof a temporary injunction as prayed in said motion.

Third. The District Court of the United States for the Western District of Oklahoma erred in holding that notwithstanding the order of the Corporation Commission of Oklahoma complained of herein had been put into effect and was a present enforcible law, and notwithstanding the Supreme Court of Oklahoma refused to grant a supersedeas suspending the operation of said order pending the appeal to said Supreme Court of Oklahoma, so that said order was and is enforcible and has been and is being enforced against this complainant, nevertheless the application for a temporary injunction was premature, and will be so until the Supreme Court of Oklahoma shall pass upon the appeal taken by this complainant to said court from the said order of said Corporation Commission.

Wherefore, this complainant prays that said decree be reversed, and that said District Court of the United States for the Western District of Oklahoma be ordered to enter a decree setting aside its

said order or decree, and granting to this complainant the temporary injunction prayed for.

AMES, CHAMBERS, LOWE &  
RICHARDSON,  
*Attorneys for Complainant.*

Endorsed: Filed in District Court May 5th, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

520 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 501.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL, ART L. WALKER, and E. R. HUGHES, Constituting the Corporation Commission of Oklahoma, and S. P. Freeling, Attorney General of Oklahoma, and The City of Tulsa, a Municipal Corporation, and Frank E. Duncan, Its City Attorney, and The City of Sapulpa, a Municipal Corporation, and Leroy J. Burt, Its City Attorney, Defendants.

*Order Allowing Appeal.*

On motion and petition of complainant it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein, be and the same is hereby allowed; that a certified transcript of the record, testimony, exhibits, orders, and all proceedings had herein, be forthwith transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of \$1,000.00.

Done at Oklahoma City, Oklahoma, this 5th day of May, 1922.

JOHN H. COTTERAL,  
*Judge of the District Court of the  
United States for the Western  
District of Oklahoma.*

Endorsed: Filed in District Court May 5th, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

521 In the District Court of the United States for the Western  
District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,

vs.

CAMPBELL RUSSELL et al., Defendants.

*Bond on Appeal.*

Know all men by these presents:

That we, Oklahoma Natural Gas Company, a corporation, as principal, and Fidelity & Deposit Company of Maryland, a corporation, as surety, are held and firmly bound unto the State of Oklahoma in the sum of One Thousand (\$1,000.00) Dollars, for the payment of which well and truly to be made, we bind ourselves, our successors and assigns firmly by these presents.

The foregoing bond is conditioned, however,

That, whereas, the above named Oklahoma Natural Gas Company has prosecuted an appeal to the Supreme Court of the United States to reverse an order or decree of the District Court of the United States for the Western District of Oklahoma, made on April 27, 1922, denying an interlocutory injunction in the above entitled cause:

Now, therefore, the condition of this obligation is such that if the above named Oklahoma Natural Gas Company shall prosecute its said appeal to effect, and shall answer all costs if it fails to make good its plea, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

522 Dated this 5th day of May, 1922.

OKLAHOMA NATURAL GAS COMPANY,

*Principal,*

By D. A. RICHARDSON,

*Its Attorney of Record.*

FIDELITY AND DEPOSIT COMPANY OF  
MARYLAND,

*Surety,*

By D. NEWELL JONES,

*Its Attorney in Fact.*

[SEAL.]

Approved May 5, 1922.

JOHN H. COTTERAL,

*District Judge.*

Endorsed: Filed in District Court on May 5th, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

523 In the District Court of the United States for the Western District of Oklahoma.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, a Corporation, Complainant,  
vs.

CAMPBELL RUSSELL et al., Defendants.

*Præcipe for Transcript of Record on Appeal.*

To the Clerk of the above-named court:

You are hereby requested to prepare a transcript of the record in the above entitled and numbered cause to be filed in the Supreme Court of the United States, and to include the following:

First.

Complainant's Bill of Complaint.

Second.

Defendants' Answer.

Third.

Motion of defendant City of Tulsa to dismiss.

Fourth.

Complainant's Application for Temporary Restraining Order.

Fifth.

Order granting temporary restraining order.

Sixth.

First Bond for temporary restraining order.

Seventh.

Application for Extension of Restraining Order.

Eighth.

Order Extending Restraining Order.

524 Ninth.

Bond given on extension of restraining order.

## Tenth.

Order continuing restraining order until final determination of application for temporary injunction.

## Eleventh.

Third Bond for restraining order in the sum of Three Hundred Thousand Dollars.

## Twelfth.

All affidavits filed by complainant in support of its application for temporary injunction, except affidavit No. 2, of R. C. Sharp indentifying Order No. 1886 made by the Corporation Commission.

## Thirteenth.

All affidavits filed by defendants in opposition to granting temporary injunction.

## Fourteenth.

All affidavits filed by complainant in rebuttal.

## Fifteenth.

All affidavits filed by the defendants in surrebuttal.

## Sixteenth.

Order of the Court denying temporary injunction.

## Seventeenth.

Written opinions of the Judges.

## Eighteenth.

Complainant's application for supersedeas.

## Nineteenth.

Defendants' motion to require refund.

## Twentieth.

Court's order denying supersedeas in part and granting the same in part.

Complainant's supersedeas bond.

Twenty-second.

Stipulations for substitution of parties.

Twenty-third.

Order substituting parties.

Twenty-fourth.

Petition for appeal.

Twenty-fifth.

Assignments of error.

Twenty-sixth.

Order allowing appeal.

Twenty-seventh.

Appeal Bond.

Twenty-eighth.

Præcipe for transcript of record.

Twenty-ninth.

Citation and service thereof.

Thirtieth.

Clerk's certificate.

The appellant hereby gives notice of its election to take and file a typewritten transcript of record herein designated in the Supreme Court of the United States to be printed under the supervision of its clerk and under its rules.

D. A. RICHARDSON,  
*Attorney for Complainant.*

Service of the above and foregoing præcipe is acknowledged on this 10th day of May, 1922. The foregoing comprehending entire record, with exception noted, defendants waive additions to record.

E. S. RATLIFF,  
HENRY G. SNYDER,  
LEROY J. BURT,  
A. J. BIDDISSON,  
I. J. UNDERWOOD,  
*Attorneys for Defendants.*

Endorsed thereon: No. 501—Equity. In the District Court of the United States for the Western District of Oklahoma. Oklahoma Natural Gas Company, complainant vs. Campbell Russell et al., defendants. Præcipe for Transcript of record on appeal. Filed May 10, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

526

*(Clerk's Certificate to Transcript.)*

UNITED STATES OF AMERICA,

*Western District of Oklahoma, ss:*

I, Arnold C. Dolde, Clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in case Number 501, in Equity, in said court, wherein the Oklahoma Natural Gas Company, a corporation, is plaintiff, and The Corporation Commission of Oklahoma, and others, are defendants, as full, true and complete as the said transcript purports to contain and as called for by the præcipe for transcript of the record above set forth.

I Further certify that the original citation is hereto attached and returned herewith.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of Guthrie, in said district, this 25th day of May, A. D. 1922.

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,

*Clerk.*

By M. V. HAWS,

*Deputy Clerk.*

Endorsed on cover: File No. 28,956. W. Oklahoma D. C. U. S. Term No. 406. Oklahoma Natural Gas Company, appellant, vs. Campbell Russell, Art L. Walker, and E. R. Hughes, constituting the Corporation Commission of the State of Oklahoma, et al. Filed May 31st, 1922. File No. 28,956.

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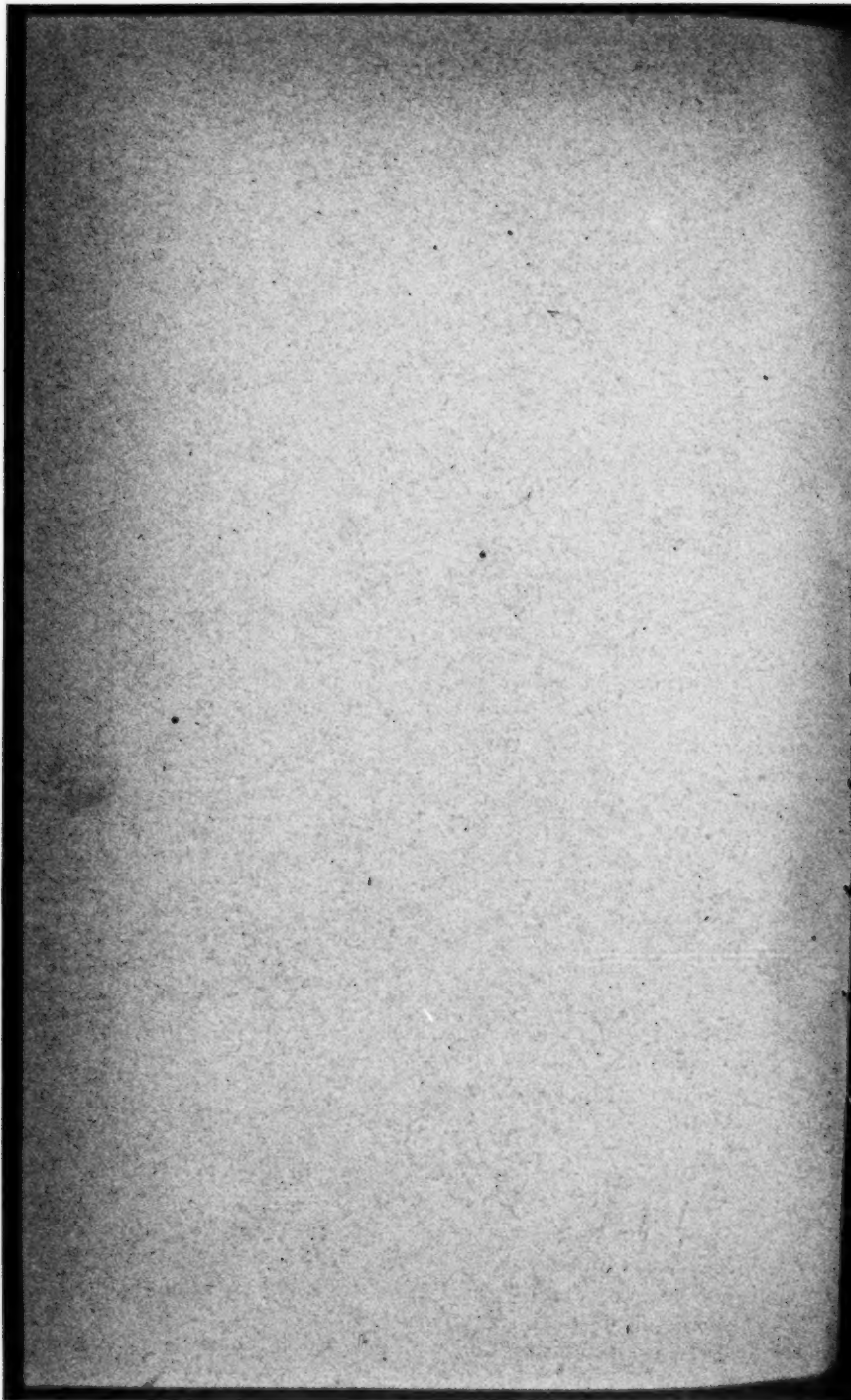
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# Supreme Court of the United States

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OCTOBER TERM, 1922.

No. 406.

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OKLAHOMA NATURAL GAS COMPANY, A CORPORATION, Appellant,

*vs.*

CAMPBELL RUSSELL ET AL., Appellees.

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## ABSTRACT OF PLEADINGS AND EVIDENCE.

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On December 12, 1921, appellant filed its bill in equity in the District Court of the United States for the Western District of Oklahoma against the Corporation Commission of Oklahoma and its members, the Attorney General of said State, and certain cities therein and their city attorneys, to enjoin the enforcement of certain rates prescribed by the Corporation Commission to be charged by appellant for natural gas.

For the court's convenience appellant has made and herewith presents an abstract of the pleadings and evidence filed in said cause. References in this abstract are to the printed transcript of the record.

### **The Bill of Complaint.** (Tr. 4-27)

Appellant is a corporation under the laws of Oklahoma, and is a public utility engaged in the business of furnishing natural gas in certain portions of said State for light, fuel, heat and power purposes.

It has outstanding stock of the par value of \$14,300,000,

bonds in the sum of \$1,010,000, and a floating indebtedness of \$2,244,761, all of which, and much more, has been invested in property used and useful in rendering its public service.

For the purpose of carrying on its said business it has acquired and owns gas leases, gas wells, gas gathering lines, gas transmission lines and systems, compressor stations, regulator stations, rights of way, distributing lines and systems, and many other items of property, both real and personal; and the present fair value of its property used and useful in rendering its said public service is not less than \$20,000,000.

Appellant's property may be divided, and for rate making purposes the Corporation Commission has divided it, into two general classes: First, the production and transmission property, with which appellant produces, purchases and gathers the gas in the fields, and transports it to the borders of the various towns and cities served. This includes the gas leases, gas wells and their equipment, gas gathering lines, compressor stations and sites, and the transmission pipe lines and rights of way. In short, it includes everything used and useful in getting the gas and in transporting it to the corporate boundaries of the towns and cities served. Second, the gas distributing systems owned by appellant with which it distributes the gas to the public in thirty towns and cities in which it has natural gas franchises.

In addition to delivering gas into its own distributing plants for distribution in the towns and cities served directly by it, appellant's same production and transmission property also procures, transports and delivers gas to a number of local independent gas companies for distribution and sale to the public in certain towns and cities where they, and not appellant, own the franchises and the distributing plants, namely: to the Commonwealth Public Service Company at Wagoner; the Muskogee Gas & Electric Company, at Muskogee; the Midfield Gas Company at Oilton; the Shawnee Gas & Electric Company at Shawnee; the Guthrie Gas, Light, Fuel & Improvement Company at Guthrie; the Southwest Gas & Fuel Company at Duncan and Marlow; and the Oklahoma Gas & Electric Company at Oklahoma City, Enid, El Reno, Yukon and Britton; all in Oklahoma.

The gas is furnished to these independent distributing companies from the same leases and wells, and through the

same pipe lines and other instrumentalities, which are used in furnishing gas to appellant's own distributing systems, and is delivered into their plants at the corporate boundary of each town and city which they serve. In supplying those independent distributing companies appellant acts as a public utility.

Appellant buys a large portion of its gas from oil producers in the fields. It is not able to produce enough to supply the demands made upon it. Also, it is not able to buy a sufficient quantity to supply its demands; so that it is required both to produce and to purchase gas. And even then, in periods of extremely cold weather, it is unable to procure a sufficient quantity to supply adequately the demands of its patrons.

From September 1, 1919, to April 15, 1920, the rates for gas in all of appellant's distributing systems, and also in the distributing systems of each of the independent companies which obtained their gas from appellant, as fixed by the State Corporation Commission, were:

First 100 M cu. ft. per month---40c per M net.

Next 400 M cu. ft. per month---32c per M net.

All over 500 M cu. ft. per month---25c per M net.

During that time appellant was paying six cents per M cubic feet in the field, measured at the mouth of the wells, for all the gas it purchased; and the above schedule of rates was purported to be fixed upon the basis of the purchased gas costing appellant six cents per M at the mouth of the wells. However, the quantity of gas available to appellant, including all it could produce and all it could purchase, was not sufficient to supply adequately the demands of its patrons.

Also, until July 1, 1921, the price appellant received for the gas which it furnished to the independent distributing companies above named, to be sold and distributed by them in the towns and cities which they served, was two-thirds of the collections made by said distributing companies for the gas sold for domestic purposes, and three-fourths of the collections made for the gas sold for industrial purposes.

In March, 1920, appellant found an opportunity to purchase an additional supply of gas amounting approximately to 20 million cubic feet per day, provided it would pay therefor 10 cents per M cubic feet measured at the wells. To

enable appellant to acquire this additional supply at the increased price, the Corporation Commission, considering the division of the proceeds with the independent companies, the matter of leakage, and an additional investment in new lines required to reach the gas, increased appellant's rates and those of the independent companies to the following schedule:

First 100 M cu. ft. per month---48c per M net.

Next 400 M cu. ft. per month---40c per M net.

All over 500 M cu. ft. per month---33c per M net.

However, the Commission having been informed that appellant contended that all its rates were grossly inadequate, and that it intended soon to file an application for a general increase in rates, provided in its said order that the above mentioned increase in rates should be temporary only, and should be in effect until November 1, 1920, or until further ordered by the Commission.

Both the appellant and the Corporation Commission having inventoried and appraised appellant's property, on August 5, 1920, appellant filed with the Commission an application for a general increase in all its rates; and, among other relief sought, it prayed the Commission to fix a reasonable flat price at the town borders at which it should furnish gas to the local independent distributing companies hereinbefore named in the place of the division of the proceeds of the collections made by said distributing companies theretofore obtaining.

Appellant's properties serving the City of Claremore and the towns of Ramona and Inola were eliminated from the hearing, and ordered heard separately.

On December 20, 1920, the hearing of said cause not having been completed, but the Commission finding that appellant's financial condition was desperate, it made a temporary order fixing appellant's rates in the towns and cities directly served by it, and the rates of the independent distributing companies receiving their gas from appellant, at the following schedule:

First 100 M cu. ft. per month---58c per M net.

Next 400 M cu. ft. per month---50c per M net.

All over 500 M cu. ft. per month---40c per M net.

It was provided in said order that said rates should be in effect until March 31, 1921, and pending the final hearing

and determination of said cause; and that said increase should not be shared by the local independent distributing companies, but the amounts by them collected under said schedule in excess of what they would have received under the schedule theretofore existing should go to appellant. Said temporary order and rates never became effective, for the reason that the Supreme Court of Oklahoma granted a writ of prohibition against their enforcement.

Appellant's application for a general increase in its rates was not determined by said Commission until June 25, 1921. On October 1, 1920, by reason of competitive conditions, appellant was required to, and did, increase the price which it paid for all the gas it purchased to ten cents per M, which price it has been paying ever since. Nevertheless, before it determined said cause, the Commission ordered appellant to cease charging the 48 cent rate it had granted because of the increased price it was required to pay for only a portion of the gas purchased, and directed it to put into effect again the 40 cent rate theretofore prevailing.

On June 25, 1921, the Commission made its final order, known as Order No. 1886, upon appellant's application for increased rates. It therein found that it was to the public interest that appellant charge and receive a flat price per M cubic feet at the city gates or town borders for all gas which it furnished to local independent distributing companies; and it so ordered. For the purpose of determining what said town border or city gate rate should be, and also for the purpose of determining the cost of gas at the town border to each distributing system owned by appellant as a basis for the fixing of proper rates in each of said distributing systems, the Commission purported to determine separately on the one hand the value of appellant's production and transmission property used and useful in producing and transporting the gas to the borders of all the towns and cities served both directly and indirectly, and also appellant's production and transmission expenses. And for the purpose of fixing the rates which appellant's distributing plants should receive for the gas in the towns and cities served by them, it also purported to determine the value of appellant's distributing plants in each of said towns and cities. In other words it treated the production and transmission property as though it were

owned by one corporation, and each distributing plant as though it were owned by a separate corporation.

The Commission fixed the town border or city gate rate to be charged by appellant's production and transmission property to all distributing plants, both those owned by appellant and those owned by the independent distributing companies, at 25 cents per M for the gas sold for domestic purposes, and 20 cents per M for the gas sold for industrial purposes; and it ruled that gas sold to each consumer in excess of 500 M cubic feet per month should be considered industrial gas and should be paid for as such.

The Commission's order relating to appellant's own distributing plants was as follows:

"The Commission finds that the cost of the properties used and useful in supplying gas in the towns and cities served directly by the Oklahoma Natural Gas Company at December 31, 1920, including reasonable allowances for amortization, engineering, supervision, interest during construction, legal expenses, accounting, casualties, incidentals and every conceivable intangible expense, going concern value and working capital, to be as follows:

Arcadia .....	\$ 5,753.45
Chandler .....	59,724.26
Coweta .....	30,196.00
Depew .....	9,461.60
Davenport .....	10,262.18
Deer Creek .....	4,242.11
Edmond .....	51,185.46
Haskell .....	44,858.58
Hunter .....	9,852.32
Kellyville .....	8,099.33
Lamont .....	15,067.97
Luther .....	6,827.30
Midlothian .....	2,371.25
Meeker .....	9,140.68
Nardin .....	4,812.84
Peckham .....	4,035.00
Pond Creek .....	20,808.28
Porter .....	12,513.36
Sapulpa .....	260,534.19

Shamrock -----	20,846.90
Stroud -----	32,585.42
Dawson -----	
Red Fork -----	} -- 1,411,556.46
Turley -----	
Tulsa -----	
Wellston -----	11,963.74

"The Commission further finds that in order to allow a rate of return of 8 per cent and to create a fund for depreciation amounting to 5 per cent and to enable the company to serve the public efficiently, it is necessary to establish the following schedule of rates:

	Domestic	Industrial
Arcadia -----	55c	25c
Chandler -----	55c	25c
Coweta -----	55c	25c
Depew -----	50c	25c
Davenport -----	55c	25c
Deer Creek -----	45c	25c
Edmond -----	50c	25c
Haskell -----	50c	25c
Hunter -----	50c	25c
Kellyville -----	50c	25c
Lamont -----	47c	25c
Luther -----	50c	25c
Midlothian -----	55c	25c
Meeker -----	45c	25c
Nardin -----	45c	25c
Peckham -----	55c	25c
Pond Creek -----	49c	25c
Porter -----	55c	25c
Sapulpa -----	47c	25c
Shamrock -----	45c	25c
Stroud -----	55c	25c
Dawson -----	42c	25c
Red Fork -----	42c	25c
Turley -----	42c	25c
Tulsa -----	42c	25c
Wellston -----	52c	25c

"The rate for industrial gas shall not be available for quantities less than 500,000 cubic feet used by one consumer

during one month, that is the minimum charge for industrial gas shall be 500,000 cubic feet at the domestic rate. These are cash rates contingent upon the payment of bills therefor on or before the tenth day after rendition. On any bills not so paid an additional charge of 2c per M cubic feet will be made.

"This order and the rates and charges therein contained to be in full force and effect from and after the first day of July, 1921."

Each and all of said rates so fixed in said order, both the city gate rates and the distribution rates, were and are grossly inadequate, unremunerative, and confiscatory in their effect upon appellant, and operate and will operate to deprive it of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States. Appellant took a legislative appeal from said order to the Supreme Court of Oklahoma, which appeal is pending and undetermined, and will not be determined for many months to come. It applied to the Supreme Court of Oklahoma for a supersedeas, suspending the enforcement of said order, and permitting the putting into effect, during the pendency of said appeal, of reasonable and proper rates, both at the town border or city gate for said production and transmission property, and in appellant's several distributing plants; but said Supreme Court refused to grant said supersedeas. Compliance with said order pending the hearing and determination of said legislative appeal in said Supreme Court is being enforced against appellant, and has been enforced since July 1, 1921, and will be enforced by said Commission by the assessment against appellant of the enormous penalty of five hundred dollars for each and every violation of said order. Appellant has exhausted all remedies furnished it by the State; and, unless the enforcement of said order is enjoined, it is without remedy in the premises pending the hearing and determination of said legislative appeal, and must continue to submit to the confiscation of its property for an indefinite period.

The town border or city gate rates prescribed for appellant's production and transmission property are confiscatory, and therefore violative of the Fourteenth Amendment to the Constitution of the United States, in this, to-wit:

The value of appellant's production and transmission property used and useful, reckoned on the basis of what it would cost to reproduce the same, less depreciation, and excluding going concern value and working capital, was and is in excess of \$20,000,000. The original cost of said production and transmission property was \$15,216,907.64.

The going concern value of said property, that is to say, the excess of the value of said property as a going concern, with the various units comprising same assembled, installed, co-ordinated, and in working order and with an established business, over the aggregate value of all the units considered separately, was and is 15 per cent of its original cost.

During the year beginning November 1, 1920, and ending October 31, 1921, said production and transmission system sold and furnished to the various distributing plants, both those owned by appellant and those owned by the independent companies, for domestic use, an aggregate of 11,375,554 M cubic feet of gas, which, at said 25-cent city gate rate fixed by said Commission would have brought appellant's production and transmission system the sum of \$2,843,888.50. During the same period said production and transmission system sold and furnished to said distributing plants, for industrial use, 2,453,755 M cubic feet of gas, which, at the twenty-cent city gate rate fixed by said Corporation Commission, would have brought the sum of \$490,751, making a total of \$3,334,639.50 received by said production and transmission system from said distributing plants for gas. Also, during said year said production and transmission system sold 2,633,348 M cubic feet of gas in the oil and gas fields for well drilling purposes, and received therefor the sum of \$756,791.71; and it also sold to domestic consumers on its field lines, not in any city or town, 53,428 M cubic feet, and received therefor the sum of \$22,070.69, making a total gross income for said production and transmission system of \$4,113,501.90. Appellant's taxes and necessary operating expenses on its said production and transmission property for the year ending October 31, 1921, were \$3,814,422.09; and this was exclusive of depreciation, amortization, interest or dividend on the investment, and of the expense of building new lines to new gas fields upon the exhaustion of the old ones. This left appellant a net income on its said production and transmission property of only \$299,079.81 for said year, with which to pay

interest or dividend on the investment, take care of depreciation, and amortize the investment against the time when the supply of gas available for said property will be exhausted.

Appellant's sales of gas are decreasing each year. In 1917 it sold 29 billion cubic feet; in 1918, 27,225,102 M cubic feet; in 1919, 21,997,179 M cubic feet; in the calendar year 1920, its total sales of gas in all its properties were 20,030,706 M cubic feet. For the year beginning November 1, 1920, and ending October 31, 1921, its total actual sales of gas from all its properties for all purposes, including the Claremore, Inola and Ramona systems, which are not in this case, was only 13,740,290 M cubic feet.

Appellant has operated under said rates prescribed by said Commission since July 1, 1921, and the result of its said operation has been that appellant's actual out of pocket expenses have exceeded its gross income during said period in the sum of approximately \$75,000.00.

The Commission's said order is further confiscatory and violative of the Fourteenth Amendment in that the Commission, in valuing said production and transmission property, took the original cost of said property, less the depreciation thereon, as the rate base, thereby denying appellant the benefit of the appreciation in the value of said property, and it then fixed the rates at less than it found were necessary to give appellant a reasonable return on the depreciated original cost.

The business of producing and transporting natural gas for public use combines a public service with a mining venture, and is the most hazardous of all public services. With the exception of water companies, all other public utilities manufacture the basic element of their service; consequently the duration of their business has no natural limitation, and their owners run no risk of a sudden loss of their investment. As to water companies, their supply is constantly replenished by the falling of rains and the melting of snows. Natural gas, however, cannot be made by man, the supply is limited and exhaustible, and when once exhausted can never be regenerated. And when the available supply is exhausted the natural gas company's business is at an end, and its investment for the purpose of producing and transporting natural gas becomes worthless except for what it will bring as junk.

The supply of gas in Oklahoma is failing, and appellant has been required to increase its investment year after year, not for the purpose of obtaining additional patrons or increasing the volume of business done by it, but merely for the purpose of being able to continue to furnish a constantly diminishing supply of gas to those it is already obligated to serve. By the year 1917, due to depletion, appellant's supply of gas had become inadequate, and appellant was required to build new pipe lines to new fields, which it did in 1917 at a cost of \$974,473.09 of new money furnished by its stockholders. Its net earnings in its entire production, transmission and distributing business during that year, after deducting its usual and ordinary operating and maintenance expenses, but making no allowance for either depreciation or amortization, were \$78,767.58, and the expenditure in new lines was not reckoned as an expense, but as an additional investment.

In 1918 appellant's net earnings in its entire gas business, after paying its usual and ordinary operating expenses, but making no allowance for either depreciation or amortization, were \$1,225,753.52; but in order to continue to furnish gas appellant was required during that year to build additional pipe lines and compressor stations costing it \$1,632,004.72.

In 1919 appellant's net earnings, without making any charges for depreciation or amortization, were \$1,343,579.33; and in that year appellant was required to build new pipe lines to new gas fields, which it did at a cost of \$1,419,667.34.

In the year 1920 appellant's net earnings, by making no charges for amortization or depreciation, were \$1,460,748.02; and during the same year appellant was required to and did build new lines to new fields costing it \$1,528,195.81.

In the years 1917, 1918, 1919 and 1920 appellant's net earnings by charging itself with no depreciation or amortization were \$4,108,848.45; and during the same period appellant was required to and did make additional investment, in order to continue to get and furnish gas to the same patrons it was already obligated to serve, amounting to \$5,554,341.01, or \$1,445,491.56 more than was its net income after paying its usual and ordinary expenses and taxes. The additional investment in new lines, being made for the purpose of furnishing a diminishing supply of gas to those it was already

obligated to serve, was in reality an expense incurred in furnishing gas, and thus making appellant actually operate at a deficit each year.

The distances which appellant is now required to transport its gas, the enormous increases it has been required to make in its investment in order to get and furnish gas, the increased cost of gas in the field, and the increase in appellant's operating expenses and taxes caused by the increase in its investment, the far extension of its lines, and the increased number of employees necessary, make the cost of furnishing gas such that appellant can sell but little industrial gas in competition with coal and oil.

All the gas fields from which appellant originally obtained its gas have long since been exhausted, and many other fields to which it subsequently built lines have also been exhausted; and according to appellant's best information and belief it will be impossible for it to continue in business for a longer period than eight years from this date, and it is probable that that period of time may be cut in half. The business is the most risky and hazardous of all public utilities; and for that reason appellant should have a larger return for interest or dividend on the investment than is granted ordinary stable public utilities, and it is further entitled to an additional earning for the purpose of amortizing its investment against the time when the gas is exhausted and its property becomes worthless.

Appellant's rates for gas have never been such as to enable it to earn or set aside any sum for depreciation or amortization on its property. Under the rates fixed by the Corporation Commission its earnings have not been sufficient to enable it to build the new lines to new fields which it has been required to build in order to continue in business.

Natural gas contains twice the heating units of artificial gas, and upon the basis of its actual value, as compared with artificial gas, is intrinsically worth to the domestic consumer two dollars a thousand cubic feet.

Appellant is required to purchase its gas in the northern and northeastern portions of Oklahoma in competition with the Kansas Natural Gas Company, the Empire Gas Company, and the Wichita Gas Company, which purchase gas in Oklahoma and transport the same to Kansas and Missouri, and there receive for it rates ranging from 58 cents to a dollar a

thousand. Appellant is also required to purchase its gas in the Walters field in southern Oklahoma in competition with the Lone Star Gas Company, which buys gas in that field and transports same to Texas, and receives for it a net domestic rate of 67½ cents a thousand.

The averments of appellant's bill respecting the value of its distributing plants in the various towns and cities served directly by it, and the effect of the Corporation Commission's order upon appellant's operations in said towns and cities may be condensed and shown by the table following. With respect to said table the following explanations are made: The first column contains the names of the towns and cities involved in which appellant owns the distributing plants. The second column contains the statement of the present fair value of the distributing plant in each town and city as averred in the bill. The third column shows what would have been appellant's gross earnings in each of said distributing plants at the rates prescribed by the Corporation Commission in its order No. 1886, during the year beginning November 1, 1920, and ending October 31, 1921. Appellant's operations in each of said towns and cities from July 1, 1921, to October 31, 1921, were actually at the rates prescribed by the Corporation Commission in its said order. Appellant, however, takes the total amount of gas sold by it in each of said distributing plants from November 1, 1920, to October 31, 1921, and applies the rates prescribed in said order to the amount of business done, and the figures in the second column are what would have been appellant's gross receipts at those rates.

The third column shows what would have been the amount of appellant's taxes and operating and maintenance expenses for the year ending October 31, 1921, in each of said distributing plants. Of this all the taxes and operating and maintenance expenses, except the cost of gas to the distributing plants at the city gate, were the actual taxes and expenses for the year beginning November 1, 1920, and ending October 31, 1921. From July 1, 1921, to October 31, 1921, the figures, even including the cost of gas, are actual. Under the Commission's order, however, each distributing plant is to pay the production and transmission system 25 cents per M at the city gate for domestic gas and 20 cents per M for industrial gas, and the figures in the third column also include the

cost of gas at the city gate. The fourth column shows what would have been the net income or deficit in each distributing plant at the rates prescribed by the Corporation Commission during that year. The minus sign before the figures indicates a deficit; the others indicate net income. The table of values, gross receipts, expenses and net income or deficit, is as follows:

Distributing Plant	Present Fair Value	Gross Receipts for year ending October 31, 1921.	Taxes and expenses for year ending October 31, 1921.	Net income or deficit
Tulsa -----	\$1,736,670.57	\$1,161,623.08	\$1,072,849.95	\$88,773.13
Sapulpa -----	315,611.18	194,158.74	168,780.80	25,379.94
Arcadia -----	6,323.17	4,033.60	3,545.43	488.17
Chandler -----	84,382.65	45,015.45	46,447.92	-1,432.37
Coweta -----	30,196.26	18,091.15	21,122.15	-3,031.00
Davenport -----	12,000.00	5,661.70	4,353.61	1,308.09
Dawson -----	11,500.00	2,590.14	3,721.61	-1,131.47
Deer Creek -----	5,535.09	3,903.30	3,633.21	270.09
Depew -----	9,779.92	6,964.50	6,153.64	810.86
Edmond -----	55,000.00	38,144.50	33,243.06	4,901.44
Haskell -----	70,190.37	48,507.50	39,282.37	4,225.13
Hunter -----	10,827.64	6,320.50	4,894.82	1,425.68
Kellyville -----	8,099.33	7,449.00	8,139.35	-639.35
Lamont -----	16,289.61	10,346.77	8,600.77	1,746.00
Luther -----	6,827.30	6,601.50	5,940.16	661.34
Midlothian -----	2,674.32	783.20	650.77	132.43
Meeker -----	9,150.00	6,927.45	6,392.34	535.11
Nardin -----	5,175.69	3,275.10	2,771.30	503.80
Peckham -----	4,310.65	2,809.95	2,272.54	537.41
Pond Creek -----	22,130.59	15,373.82	13,710.41	1,663.41
Porter -----	13,603.09	7,387.00	6,738.36	648.64
Red Fork -----	26,176.26	11,282.04	9,962.17	1,319.87
Shamrock -----	21,919.17	22,618.35	21,802.97	815.38
Stroud -----	34,852.61	21,600.95	19,346.46	2,254.44
Turley -----	1,965.70	2,035.14	2,662.87	-627.13
Wellston -----	12,888.16	10,521.43	10,325.45	195.93

The City of Tulsa is the only place served by appellant which is large enough to support an artificial gas plant. All the other towns and cities served are too small, so that when natural gas is exhausted the distributing plant in each of the other towns and cities will become as worthless as will appellant's production and transmission property. Also appellant has no artificial gas franchise in Tulsa, and before its distributing system there could be used for artificial gas it would be necessary for it to expend from three to five hundred thousand dollars thereon in converting it into an arti-

ficial gas plant; so that, in addition to appellant's being entitled to a reasonable return for interest or depreciation upon its investment, it is also entitled to an additional earning for the purpose of amortizing its said properties against the time when natural gas will be exhausted.

Appellant has no adequate remedy at law, and unless the court will grant an injunction enjoining the enforcement of said rates, appellant will be deprived of its property without due process of law, in violation of the Constitution of the United States, and will suffer other great and irreparable damage and injury.

Appellant prays that the court issue a temporary injunction enjoining the enforcement of said rates, both town border or city gate rates and distribution rates, pending the hearing and determination of its legislative appeal in the Supreme Court of Oklahoma; and that the court retain jurisdiction of the bill, and upon the determination of said legislative appeal in said Supreme Court, if the rates there fixed should be inadequate and confiscatory, then that appellant have leave to file a supplemental bill for a permanent injunction against said rates so fixed, and that appellant have all such other and further relief to which in law or in equity it may be entitled.

#### **The Defendant's Answer.**

(Tr. 49-70)

Defendants challenge the sufficiency of the bill because it shows that appellant has an adequate remedy at law by appeal from the Commission's order to the Supreme Court of Oklahoma, that appellant is pursuing such remedy, and is not entitled to the relief prayed until the appeal in said Supreme Court shall have been determined.

They admit that as to its gathering lines, transmission lines and systems, pressure stations, regulator stations, rights of way, and distributing systems, appellant is a public utility; but as respects its ownership and use of gas leases and gas wells, it is not a public utility within the meaning of the Constitution and laws of Oklahoma.

They deny that the present fair value of appellant's property used and useful in its public service is the sum of 20 million dollars. If appellant owns property of that value,

then the same includes items of property valued at many millions of dollars which is owned and used by appellant in its private capacity, and which should not be considered in making rates for gas.

They admit that from September 1, 1919, to April 1, 1920, the rates for gas were as alleged in the bill, and that the same purported to be based upon appellant's paying 6 cents a thousand cubic feet for the gas which it purchased in the field.

They admit that until July 1, 1921, the price received by appellant for gas furnished to the independent distributing companies was two-thirds of the collections made by the latter for the gas sold for domestic purposes, and three-fourths of the collections made for gas sold for industrial purposes. Said price was fixed by voluntary contracts made by appellant with said independent distributing companies, and if the performance of such divisional contracts caused appellant an inadequate return, the same is entitled to no weight or consideration in this suit.

On July 1, 1921, said divisional contracts were abrogated by the Commission's order No. 1886, and by such order there was substituted in their stead the city gate or town border rate complained of in appellant's bill.

Through said divisional contracts appellant voluntarily sustained a loss from unaccounted for gas caused by the defective construction and maintenance of the distributing systems of the independent distributing companies. Also by reason of the improper and inadequate construction of appellant's own distributing systems, and its failure to keep the same in a reasonably tight state of repair, excessive leakage of gas occurred, amounting to not less than 20 per cent. of the gas by it transported and delivered, when the leakage in a properly constructed and maintained system should not exceed 5 per cent of the gas transported. Appellant is not entitled to be compensated by the public for the gas lost by such excessive leakage, either in its own distributing plants or in those of the independent distributing companies. Such excessive leakage was not less than 15 per cent of the total volume of gas supplied through appellant's transmission lines and system, and not less than 10 per cent of all the gas which was delivered into the distributing systems of the independent distributing companies. By the exercise of reasonable diligence and the expenditure of a reasonable amount of money,

it would have been possible to have so repaired said transmission system and the local distributing systems as to have saved from loss the percentages above named.

If the rates fixed by the Commission's order No. 1886 yield the appellant an inadequate return, which defendants deny, the responsibility for such inadequacy rests upon appellant, because, if such systems were in a reasonable and proper state of tightness the said rates would be more than adequate to yield a proper return upon any reasonable value which appellant could claim for its properties, including its privately owned production properties, as well as to produce an adequate reserve for depreciation and amortization.

They admit that in March, 1920, as a temporary expedient to meet the emergency alleged in the bill, a temporary increase was made in the rates for gas as averred in the bill, but the same was prescribed because of the emergency presented by appellant's then condition. The Commission has never failed promptly to consider any emergency in which appellant found itself and for which it sought relief; and the Commission avows its willingness and readiness to entertain and act upon any proposition, question or condition, whether of a permanent or emergency character, which appellant may present to it, and to grant appellant any relief to which in such circumstances it may show itself entitled.

They admit that both appellant and the Commission caused the former's properties to be inventoried and appraised; that on August 5, 1920, appellant filed with the Commission its application for a general increase in all its rates on all its systems, and for the fixing of a city gate or town border rate in the place of the divisional contracts, and that said application was heard.

They admit the making of the order of December 20, 1920, as alleged in the bill, and that the Commission and appellant were prohibited by the Supreme Court of Oklahoma from putting into effect the rates therein prescribed. The circumstances attending the making of said order are explained in the Commission's order No. 1886 attached as Exhibit A to this answer.

They admit that appellant's application for a general increase in all its rates, filed on August 5, 1920, was not finally determined until June 25, 1921, but the same was determined with all practicable expedition, the record being voluminous.

They admit the lapsing of the order effective April 1, 1920, and the reversion of appellant's rates to those theretofore in effect. However, the same reverted by virtue of the terms of the order itself, and appellant instituted no proper proceedings before the Commission to prevent such reversion. If appellant was required on October 1, 1920, to increase the price for all the gas it purchased to 10 cents per thousand cubic feet, the same was not due to any order of the Commission, but was due solely to competitive conditions in the gas fields.

They admit that on June 25, 1921, the Commission issued its final order No. 1886, and defendants attach a copy thereof to this answer as Exhibit A hereto, and make the same a part hereof.

They admit that in said order the Commission found that it was to the public interest that a city gate rate to each distributing plant be established for appellant's production and transmission property, and after examining the evidence adduced, the Commission stated as follows:

"For the present purposes, therefore, the Commission will take as the value of the production and transmission system of the Oklahoma Natural Gas Company, including the general system and the Enid system, but excluding Claremore, Ramona and Inola, the sum of \$14,528,879.86."

From the data and evidence submitted to the Commission it was unable finally to pass upon and dispose of the matter of separating appellant's production property from its transmission property. Appellant's production property is private property as distinguished from that used and useful in serving the public. For that reason, for the purpose of making a rate at that time and affording appellant such relief as the Commission was then able to afford it, the Commission predicated its order upon the value aforesaid, which includes appellant's production or private property as well as that which alone properly furnishes the predicate for a rate base; but the Commission did not find or conclude that all of such property was used or useful in appellant's public service business. Notwithstanding which, the Commission made the rate therein fixed, and based the same upon the data and experience then available for consideration by it, believing that the said rate was sufficient to produce to appellant an adequate return for amortization, depreciation and net earnings.

They deny that either the city gate rates or distributing rate, or both, fixed by said order, are inadequate, unremunerative or confiscatory, or that they operate or will operate to deprive appellant of its property without due process of law.

They admit that appellant appealed from said order to the Supreme Court of Oklahoma, and that said appeal is pending and yet undetermined. Appellant delayed taking its appeal until the -----day of December, 1921, and until almost the expiration of the time within which an appeal could be taken. Under the Constitution of Oklahoma it is provided that appeals in such cases shall have precedence on the docket of the Supreme Court, and shall be heard and disposed of promptly next after the habeas corpus and State cases already on the docket. Said appeal will be speedily determined, and defendants are willing to co-operate with appellant in procuring the earliest possible determination thereof.

Sec. 23, Art. 9, Constitution of Oklahoma, provides that the Commission's right to prescribe and enforce rates, charges, classifications, rules and regulations affecting any or all actions of the Commission theretofore entered by it, and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; and the Commission in the order complained of based its calculations upon the demand for gas in preceding years; and if appellant has not been able to sell and dispose of as much gas as theretofore, and because thereof the rates prescribed by said order are inadequate, then appellant has an adequate remedy by applying to the Commission for an increase based upon the failure of the order to measure up to the experience upon which said order was predicated, and appellant has not availed itself of said remedy. The Commission is willing to consider any application which appellant may make to it for relief by reason of any different condition or circumstances.

They deny the averments of the bill as to the reproduction value of appellant's production and transmission property, and as to depreciation and the additions made to the system. Appellant is not entitled to have its properties valued for rate purposes at the cost of reproduction less deprecia-

tion; and also appellant's production property is not proper to be considered in fixing a rate base. Also large elements of appellant's property have become useless in its public service, as many of the gas fields from which it formerly obtained its gas and into which it built its lines have been exhausted, and are not used or useful in the public service, which said properties are nevertheless included in the inventories and appraisments, and render the same wholly unreliable.

They deny that the original cost of appellant's production and transmission systems, including additions to January 1, 1921, was \$15,216,907.64. The cost as shown in the Commission's order is the true amount thereof, and the cost of appellant's public utility property useful in its business at the present time does not exceed \$8,000,000. Included in the amount stated in the order to have been the cost of appellant's properties are many millions of dollars paid for large acreages of leases in wildcat and undeveloped territory and in speculative and venturesome drilling, which, even if the production property be considered as properly a part of the public utility property, was nevertheless of such speculative character and so unproductive of results as not to entitle it to consideration in a proper determination of the cost of appellant's property.

Large portions of appellant's production properties, including leases and pipe lines, were purchased from other corporations owned and controlled in large part by appellant's officers consummating such purchases, the purchase price thereof being paid with appellant's stock at a par value equal to the consideration agreed upon by the parties between themselves, and the same did not represent the cost of the properties to the vendor corporations. The amount in par value of stock paid for the properties purchased from said corporations was approximately \$4,642,000. At the time of the organization of appellant no cash was paid into the company for the issuance of its then \$4,000,000 capital stock, but such stock was issued in its entirety for properties in large part bought from the promoters of the company, who subsequently became officers of appellant corporation, at prices fixed by themselves to be paid to themselves in stock of the appellant. The property so acquired consisted of about 10,000 acres of leases in a territory which was described as a virgin field with no pipe lines, situated in the Hogshooter district, and which

properties are exhausted, and against which only \$508,751.79 has been charged as for removals. Except for money received from the indebtedness of appellant, it has built up its entire properties out of earnings and the issue of its stock as above set out; and appellant's earnings have been sufficient to provide not only an adequate return upon the amount of its investment but also a sufficient reserve for depreciation and amortization, and appellant is not entitled to earnings upon a valuation in excess of \$8,000,000.

They deny that appellant's rates heretofore have not been such as to provide a reserve for depreciation and amortization. From 1907 until April 19, 1918, the rates charged by it were of its own fixing, and it was not until April 19, 1918, that appellant instituted any proceeding to have its rates fixed by the Corporation Commission.

On April 19, 1918, in cause No. 3332, appellant applied to the Commission for an increase in its rates, which was granted on June 21, 1918, by order No. 1418. Appellant never indicated any dissatisfaction with the rates fixed in said order, never moved for a rehearing in said cause, and never appealed from said cause to the Supreme Court of Oklahoma.

Defendants deny that the going concern value of appellant's property was or is 15 per cent., or any other percentage of its original cost. The elements entering into going concern value in the appraisal of public utilities for rate making purposes do not exist in appellant's properties.

They deny that appellant's production and transmission expenses, including taxes upon its production and transmission property, and exclusive of depreciation, amortization, interest or dividends on the investment, and the expense of building new lines to new fields, for the year ending October 31, 1921, were \$3,814,422.09. If such were the expenses, the same included expenses of the production property, which was a private business and not to be considered as an operating expense of the public utility. Also, the operations during the year ending October 31, 1921, furnish no certain or reliable data for testing or determining the adequacy of the rates fixed in order No. 1886, for the reason that said rates were in effect only during August, September and October, 1921, which were warm months; and for the further reason that during nine months of that period appellant's production and transmission property was operating under the divis-

ical contracts whereby appellant was suffering the leakage in the plants of the independent distributing systems. Sufficient time has not elapsed since the taking effect of order No. 1886 to furnish any accurate or reliable data as to expenditures or cost of operation under such order.

The city gate rate prescribed in order No. 1886 has been in force but five months, four of which are warm months in normal years, and were abnormally warm months in the year 1921; and all deductions drawn from the operations during said time are too unreliable to warrant an interference with the enforcement of the order.

They deny that the original cost of the appellant's production and transmission system was or is \$15,216,907.64, that the going concern value was or is \$2,252,536.15, that the working capital was or is \$494,382.39 and that the total value or rate base was or is \$17,992,826.10. The maximum rate base permissible is that assumed in the Commission's order, and from that should be deducted many millions of dollars represented by the production portion of said system, but included in the calculations made in said order; and the going concern value allowed in said order should be eliminated altogether.

It may be true that during the year 1917 appellant sold 29 billion cubic feet of gas, but not less than 12 billion of such amount was sold to appellant's competitors engaged in the business of producing and supplying gas. During said year appellant sold to the patrons of its public utility and to the independent distributing companies not to exceed 17,101,000,000 cubic feet. The figures given as to its gross sales in 1918 likewise include large quantities sold to other than the patrons of its public utility property, and in a lesser degree the same is true of the year 1919. During 1919 and 1920 appellant sold large quantities of gas to industrial users, but during the latter part of 1920 and almost the entire year 1921 the price of fuel oil and coal so decreased that appellant was unable to sell natural gas for industrial purposes in competition with those fuels; but the quantity sold at the higher rate prescribed for domestic purposes has largely increased and is increasing, and by the diminishing sales of gas for industrial purposes there has been a conservation of gas for domestic purposes which is sold at higher prices, and in consequence appellant will in the long run be greatly benefited.

They admit that appellant has operated under the rates prescribed in order No. 1886 since July 1, 1921. As to the deficits caused thereby, the period of such operation has been abnormally warm, and has not been a fair time within which to test the reasonableness or sufficiency of said rates. By far the greater quantity of gas for domestic and home purposes is sold during the months of December, January, February and March, which, taken of themselves, will produce unwarranted net earnings. The rates fixed in said order were not intended, nor is appellant entitled to have them, yield a return sufficient for any isolated months or series of months of the year, but they were intended to yield an adequate return for yearly periods embracing all the varying weather conditions normally occurring.

Also during the year 1921, and including the months during which appellant has operated under the order complained of, conditions have been abnormal in that the price of fuel oil has been such that appellant could not sell natural gas for industrial consumption in competition therewith, and as a result appellant has lost a large amount of its industrial business; but in recent months the price of fuel oil has so advanced as to warrant the expectation that a time will come when gas can be sold in competition therewith.

They admit that the Commission refused to adopt the reproduction cost of appellant's production and transmission property, less depreciation, as a rate base; but the result was not to deprive appellant of its property without due process of law, because the reproduction cost is not the basis for determining the fair value of public utility property. Said reproduction cost was based upon the application of labor and material costs at the peak of abnormal prices, resulting from the prosecution of the late war; and the prices of labor and material have so declined within the past months that if present day prices were applied to appellant's property, the undepreciated reproduction cost of its production and transmission systems would not exceed \$18,000,000, and the depreciated reproduction cost thereof would not exceed \$14,400,000, even upon the items in the inventory in evidence before the Commission.

They admit that the business of producing and transporting natural gas for public use is a most hazardous one, especially in the producing end thereof; and that upon the

exhaustion of a natural gas field, the supply is never regenerated. They admit that appellant and the United States Geological Survey believe and assert that the supply of gas in Oklahoma is nearing exhaustion. They admit that appellant has increased its investment from year to year, but deny that it has been required to do so, and aver that in so doing it has acted with full knowledge of the hazardous nature of the business, and has assumed the hazard. The Commission has never attempted to require appellant to extend its lines to new fields, though in proceedings before the Commission appellant has represented that it would do so if it were allowed increases by which it might be compensated for the outlay in making such extensions, and the same have been granted.

The intrinsic value of gas is not such as to justify rates that will give appellant a return sufficient to provide dividends upon the value of its property classed by it as public utility property, plus a reserve for depreciation and amortization; and appellant is not entitled to a rate for gas in excess of the intrinsic value of the commodity, although such rate might be necessary to produce the income alleged to be necessary for such purposes. In voluntarily entering upon the service of the public, appellant assumed and is required to sustain and suffer the loss incident to the hazardous character of the business.

In connections with its gas business appellant is also engaged in producing oil, and as a part of the cost it has included millions of dollars as the price of highly speculative and so-called wildcat leases. Developing and testing such wildcat leases have been done mostly in the guise of testing for gas; and as a rule when appellant was testing out wildcat territory, probably 95 per cent of the time it was wildcatting for gas, and the expenses of such experiments have been charged to the gas property, except in those cases in which oil has been discovered, when the cost of drilling the particular well was charged to its oil operations. In the development of 107,000 acres of leases in the Osage country, much of the wildcatting was two or three miles in advance of definitely developed territory, and the majority of the wells thus drilled were dry, notwithstanding which, as to all of the enormous numbers of acres on which appellant holds leases, rental charges on such leases, and the wildcat development have been charged as gas expense. Such speculative and

hazardous undertakings and the expense thereof should not be considered in determining a proper rate or proper valuation for rate purposes, because in such event the public would be required to compensate appellant for the loss incurred in such speculative ventures when appellant in its private capacity would reap the profits of that portion of such development resulting in the production of oil.

Moreover, appellant in its private capacity extracts from substantially all of the gas transmitted through its lines the gasoline content thereof to its great profit, and does not credit the net profits resulting therefrom to its gas accounts, and the same are not reflected in the income figures alleged in appellant's bill, though the same are derived directly from the operation of appellant's gas utility business. They admit that the gas fields from which appellant originally obtained its gas are exhausted, and that many of the fields to which it has built its lines have also been exhausted. By reason thereof the properties and lines used for the transmission of gas from such fields are no longer useful in appellant's business. Also, many other fields from which appellant obtains gas have been so nearly exhausted that the value thereof in its business is so reduced as not to be of an appreciable amount.

They deny that it will be impossible for appellant to continue in business for a longer period than eight years. The averments respecting such matter are purely speculative and conjectural.

They deny that appellant is entitled to earn as return on the investment 10 per cent. per annum. Eight per cent. is sufficient, and an additional 8 per cent. per annum is sufficient for depreciation and amortization; and appellant's earnings in the past have been sufficient to completely amortize its original investment.

Defendants are informed, and hence allege the fact to be, that with very little additional capital expenditure appellant could acquire large quantities of gas from private producers at prices much below those it pays for the gas by it transported for public use; and if it conceives itself to be under the duty of extending its lines to new gas fields, it has not conformed to that duty in making extensions to new fields and in obtaining gas therefrom at such reduced prices as would enable and justify a reduced rate to patrons in its public utility business.

Appellant has a plain and adequate remedy at law, first, by motion filed with the Corporation Commission to modify

and set aside its order No. 1886; and, second, by appeal to the Supreme Court of Oklahoma, which appeal has been taken and is now pending.

The proceedings of the Commission prior to making order No. 1886 were judicial in their nature, involving a judicial inquiry into the facts, and in entertaining said proceeding and in hearing and determining the same the Commission acted judicially, by virtue of which the court is without jurisdiction to stay said proceedings. If said proceedings resulting in said order were legislative in character, said order having already been made, any further duty or power which the Commission may be called upon to exercise must and will be judicial in its nature, which this court is without jurisdiction to enjoin.

Defendants deny the averments of the bill respecting appellant's several distributing plants, including the averments as to the reproduction value thereof, going concern value, working capital and depreciation.

The allegations in the bill as to the amount of gas sold during the several periods named in appellant's several distributing plants, if true, furnish no proper basis for attack upon the rates prescribed for each of such distributing plants, and do not furnish reliable information as to the leakage in said systems. No sufficient time has elapsed since measurements have been undertaken to disclose the extent of the leakage; but the same is not less than 20 per cent., and one-half of that amount is inexcusable. In several of the cities and towns served the distributing plants, with reasonable repairs, will be available for the distribution of manufactured gas after the exhaustion of natural gas.

The matter of fixing a standard of leakage has never been before the Commission in any general hearing, but it has considered the matter as it has arisen in connection with particular utilities, and in making the order complained of. The Commission has never in any case permitted compensation for leakage in excess of 10 per cent. in the distributing plants.

The defendants pray that appellant's bill of complaint be dismissed, and that the injunctive relief prayed for be denied; and that in any event the court refuse such relief until the determination of the appeal pending in the Supreme Court of Oklahoma.

**The Commission's Order No. 1886.**  
(Tr. 71-99)

Attached to the answer, designated as Exhibit A thereto and made a part thereof, was a true and correct copy of the Commission's order No. 1886 complained of. In said order the Commission said:

"During the pendency of the proceeding the Oklahoma Gas & Electric Company and some of the other local distributing companies filed in the Supreme Court of Oklahoma an application for a Writ of Prohibition to prohibit the Commission from entertaining the petition of the Oklahoma Natural Gas Company for the fixing of a city gate rate, on the ground that the so-called percentage contracts were beyond the police power of the State and were inviolable, and that for the State, acting through the Commission, to undertake to fix a city gate rate and require the gas to be purchased by the local distributing companies and paid for at a city gate rate would impair the obligation of the percentage contracts in violation of the Constitution of the United States.

"Pending the hearing and determination of said Writ of Prohibition the Commission, after many hearings had been had upon the petition of the Oklahoma Natural Gas Company, on December 20, 1920, made an Order fixing the following rates for natural gas in all the towns and cities served by the Oklahoma Natural, both directly and indirectly, excepting Claremore, Inola and Ramona, the town of Carney and the cities of Duncan and Marlow, to-wit: First 100,000 cu. ft. per month, 58c per M cu. ft.; next 400,000 cu. ft. per month, 50c per M cu. ft. net; all in excess of 500,000 cu. ft. per month, 40c per M cu. ft. net; and providing therein that all of the revenue raised by said rates in excess of the revenue which would have been derived under the rates existing at the time of the making of said order, should go to and be paid to the Oklahoma Natural Gas Company, but not otherwise disturbing the percentage contract existing between the petitioner and the local distributing companies, but retaining jurisdiction of the cause until after the decision of the Supreme Court of Oklahoma in said prohibition action, with power to revise the Order to conform to the decision of said court. It was provided in said Order that the increase of revenue accruing to the Oklahoma Natural Gas Company under the rates prescribed in said Order should be reserved and maintained as a special fund for the laying of additional pipe lines and installing compressor stations and such other im-

provements or betterments as should be necessary to provide additional supplies of natural gas for the patrons of the company.

"Subsequently in a proceeding by writ of prohibition instituted by some of the towns and cities affected, the Supreme Court of Oklahoma held the Order of December 20, 1920, to be void on the ground, First: That the Commission was without power to prescribe a rate payable by the consumers or patrons of the local distributing companies direct to or for the benefit of the Oklahoma Natural Gas Company, because the latter company bore no direct relation to said consumers, and Second: That the Order as worded implied that the Commission was exacting from the public a contribution to the Oklahoma Natural Gas Company's capital account rather than the payment of a reasonable rate for gas.

"As to the latter ground, the Commission was merely unfortunate in expressing its purpose and intention. It intended the increase for the purpose of amortizing that portion of the pipe line and instrumentalities of the Oklahoma Natural Gas Company which became worthless by virtue of the exhaustion of the gas fields to which they were tributary, but the Commission intended by the order to see to it that the fund thus created for that purpose was not diverted to other uses, but was used in building other pipe lines and instrumentalities to take the place of those which became worthless, and thereby, not to increase the capital account of the Oklahoma Natural Gas Company, but merely to keep the same intact. At the same time that the Supreme Court held the order of December 20, 1920, void, it also denied the application of the Oklahoma Gas & Electric Company and the other distributing companies for a writ of prohibition, and held that the Corporation Commission had jurisdiction to inquire into and determine whether or not a city gate rate should be fixed and established which the local distributing companies should pay for the gas at the city gates in lieu of the arrangements existing under the so-called percentage contracts.

"The Order of December 20, 1920, having been held void, the case stands in the situation of having been filed, tried and presented, and of having never been determined. The Commission therefore set the same for further hearing on March 31st, which hearing having been had, the cause now comes on for final determination."

Further on the Commission said:

"The Commission finds that when most of said percentage contracts were entered into, the Oklahoma Natural Gas Company was able to buy, and did buy, gas at the rate of \$100.00 for each gas well; and when the others were entered into, the Oklahoma Natural could and did buy gas at from  $2\frac{1}{2}$  to 3 cents per thousand cubic feet. Since those contracts were entered into the price of gas in the field has steadily advanced until now the Oklahoma Natural Gas Company is required to pay 10 cents per thousand for all the gas it buys; and a few days ago the Empire Gas Company bid  $11\frac{1}{2}$ c per thousand for some gas which the Oklahoma Natural had been getting at 10 cents, and by overbidding the Oklahoma Natural, the Empire took the gas away from it. As to the gas which the Oklahoma Natural produces itself, the cost of production, including labor, drilling, casing and gathering lines, has more than doubled since said percentage contracts were entered into.

"In the transmission of the gas, the cost of pipe line and compressors has trebled in price since said contracts were entered into, and the cost of labor entering into the laying of pipe lines and operating the compressor stations has more than doubled.

"The gas fields from which the Oklahoma Natural was getting its gas when said contracts were entered into have been exhausted, and many new fields to which it has built lines since have also been exhausted. The result has been that the Oklahoma Natural has been required each year since and including the year 1917, to expend large sums in laying many miles of new pipe lines and in erecting additional compressor stations in order to get and furnish gas at all, while the amount of gas which it has been able to get and sell has steadily decreased each year, from 29 billion feet in 1917 to 20 billion feet in 1920. Since and including the year 1917, the Oklahoma Natural's additional investment in new lines and compressor stations has been about five and a quarter million dollars, which has approximately equalled its net earnings during that time."

Further on the Commission said:

"It is obvious that a return that was adequate for the Oklahoma Natural when it was buying gas at \$100.00 for a gas well or at  $2\frac{1}{2}$  or 3 cents per thousand, and when the cost

of producing gas was less than half what it is now, when the cost of transporting gas was less than half what it is now, and before the enormous new investment was required to be made, could not be adequate under these changed conditions. The result, as shown by the evidence, has been that since and including 1917, the Oklahoma Natural's net earnings each year, after paying its usual and ordinary expenses, and not counting its new investment as an expense, have just about equalled the amount it was required to expend in new lines in order to get and sell a constantly dwindling supply of gas. And as the fields to which they extend become exhausted, those lines, without having been amortized, become comparatively worthless except as junk, which entails a loss of the amount invested in them. This situation has already impaired the efficiency of the Oklahoma Natural's service, and it is leading to, and if continued, will inevitably end in early bankruptcy."

Further on the Commission said:

"There is another matter that must be considered. The production and transmission property of the Oklahoma Natural Gas Company will become practically worthless, except for what it will bring as junk, when the natural gas is exhausted. This is not true, however, of the distributing plants. When natural gas is exhausted, the distributing plants can then be utilized for the sale of artificial gas in Oklahoma City, Muskogee, Enid, Shawnee, Wagoner, Guthrie and El Reno. It is therefore necessary that the Oklahoma Natural Gas Company should be allowed a return not only for interest or dividend upon the amount invested in the production and transmission property, but also for the purpose of amortizing the production and transmission property."

Further on the Commission said:

"The property in question was appraised by H. E. Musson for the Oklahoma Natural Gas Company, and by M. E. Durham, then appraisal engineer of the Corporation Commission, for the public. Mr. Musson made his appraisal upon two bases; one original cost, and the other reproduction cost new. Mr. Musson found the original cost of the Oklahoma Natural Gas Company's entire property, including its distribution plants, up to October 31, 1919, to be \$16,061,960.70. Mr. J. M. Gayle of the firm of Musson & Gayle, made an audit of the vouchers of the Oklahoma Natural Gas Company

up to October 31, 1919, and he found that the original cost of the property of the Oklahoma Natural Gas Company, including its distributing systems, up to October 31, 1919, was \$16,190,382.40. Mr. Durham completed his inventory as of September 30, 1919, and he found the original cost of only the physical property of the Oklahoma Natural Gas Company to be \$13,153,651.39. Mr. Durham testified, however, that he omitted all overheads, such as cost of organization, engineering and superintendence, law expenditures during construction, and interest during construction, and that he omitted the entire labor item upon the Oklahoma Natural Gas Company's pipe line running from Cement to Walters, a 16-inch line fifty-five miles long. Mr. Durham testified that the overheads mentioned were proper charges to be considered, and that if he had put those in his appraisal and had included the labor item on the pipe line from Cement to Walters, there would have been little, if any, difference between his appraisal and Mr. Musson's. Mr. Durham was directed by the Commission only to make an appraisal of the actual physical property of the Oklahoma Natural, and it was for that reason that he omitted the overheads. He omitted the labor items on the pipe line from Cement to Walters because the figures had not been completed and were not available at the time he finished his inventory.

"Mr. Musson's inventory and appraisal of the entire property on the basis of reproduction new without depreciation, up to October 31, 1919, was \$33,023,258.94. Mr. Durham testified that the value of the property on the basis of reproduction new would be 70 per cent. greater than on the basis of original cost. Mr. Musson also made an appraisal and inventory of the production and transmission system of the Oklahoma Natural, separate and apart from the distributing systems. He found the value of the production and transmission system, including the Enid system, but excluding Claremore, Ramona and Inola, and excluding all distributing systems, on the original cost basis up to and including October 31, 1919, to be \$13,534,999.70, without depreciation; and he found the value of the same property on the basis of reproduction cost to be \$29,023,058.94. The following table entitled 'Table I' will show the value of the production and transmission system of the Oklahoma Natural Gas Company, including the Enid

system, and excluding Claremore, Ramona and Inola, and excluding all distribution systems, on the original cost basis, to-wit:

TABLE I.

*Original cost of Production and Transmission System, including Enid System, but excluding Claremore, Ramona, Inola, and excluding all distributing systems.*

Musson's Ex. 1, Vol. 3 (to 10-31-19)-----	\$13,534,699.70
Dalious Ex. 3, (from 10-31-19 to 5-31-20)-----	37,754.76
Dalious Ex. 4 -----	67,777.48
Dalious Ex. 5 -----	727,346.92
Dalious Ex. 7 -----	253,003.75
	<hr/>
	\$14,620,582.61
Less—Claremore Prod. & Trans. System:	
Dalious Ex. 1 -----	\$ 1,898.33
Dalious Ex. 2 -----	262,910.01
	<hr/>
	264,808.34
	<hr/>
	\$14,355,774.27
Less—Removals as follows:	
Dalious Ex. 6 -----	\$206,511.55
Dalious Ex. 8 -----	302,240.24
	<hr/>
	508,751.79
	<hr/>
	\$13,847,022.48
Plus—Additions since May 21, 1920, as follows:	
On Enid Production System-----	\$ 4,034.40
On Enid Transmission System-----	31,800.00
On Main Line Production System-----	303,006.64
On Main Line Transmission System-----	68,706.64
On Added Pipes and Fittings-----	274,309.70
	<hr/>
Total -----	\$14,528,879.86

"In explanation of the foregoing table, Volume 3 of Musson's Exhibit 1 shows the original cost of the production and transmission system, including the Enid System, but excluding Claremore, Ramona and Inola, to have been \$13,534,699.70. Dalious' Exhibits 3, 4, 5 and 7 show additions to the property from October 31, 1919, to May 31, 1920, making a total value of \$14,620,582.61. From that is deducted the fig-

ures shown in Dalious' Exhibits 1 and 2, which were the additions to the Claremore production and transmission system; and also the figures shown in Dalious' Exhibits 6 and 8, which were removals from the main line system, and which left a total value as of May 31, 1920, on the original cost basis, of \$13,847,022.48. To that was added the additions made since May 31, 1920, as testified to, which made a total original cost of the production and transmission system, excluding Claremore, Ramona and Inola, of \$14,528,879.86. All of the evidence was to the effect that the production and transmission property was of this value, and there was no evidence whatsoever to the contrary.

"The very least that the Commission could take as the value of the property for rate making purposes would be its original cost. If effect also be given to reproduction cost new, then the value for rate making purposes would be several million dollars larger than the values shown in Table I above. If the original cost be taken as the value for rate making purposes, then it would seem that that value ought not to be depreciated. In other words, if the company is to be denied in valuations for rate making purposes the benefit of the increase in the value of its property, that is to say, if it is to be denied appreciation, then it ought not to be charged with depreciation. All of the evidence in regard to the depreciation was that it amounted to 18 per cent.; and in any event, if the Commission is to give any effect whatsoever to the testimony in regard to the reproduction value of the property, the increase in the value of the property as represented by its reproduction cost is much more than sufficient to offset the depreciation. For present purposes, therefore, the Commission will take as the value of the production and transmission system of the Oklahoma Natural Gas Company, including the general system and the Enid system, but excluding Claremore, Ramona, and Inola, the sum of \$14,528,879.86.

"The next matter to be determined is the production and transmission expense. At the time the case was closed the production and transmission expense was put in for the year ending May 31, 1920, and is graphically shown by the following table, entitled 'Table II,' to-wit:

TABLE II.

*Production and Transmission Expense for year ending May 31, 1920, Enid System included, but excluding Claremore, Inola, and Ramona.*

Total Production and Transmission Expenses and Taxes for year ending May 31, 1920, (Dal. Ex. 17, p. 2) General System, excluding Claremore, Inola and Ramona.....	\$ 2,952,137.21
Enid system .....	164,075.80
Total .....	\$ 3,116,213.01
Less gas purchased:	
General system (Dal. Ex. 17, p. 2) \$1,192,018.48	
Enid System (Dal. Ex. 17, p. 2) --	66,250.78
	1,258,269.26
Other expenses .....	\$ 1,857,943.75
\$1,258,269.26 paid for gas $\div .06 = 20,971,154$ M ft.	
20,971,154 at 10c per M = cost of gas at 10c ---	2,097,115.40
Total Expense .....	\$ 3,955,059.15

"These expenses were shown by Dalious' Exhibit 17, Mr. Dalious being the auditor of the Oklahoma Natural Gas Company, and were testified to by him as being correct. The total shown on this table is \$3,116,213.01, including the cost of gas purchased, which amounted to \$1,258,269.26, leaving as the expenses exclusive of gas purchased \$1,857,943.75. All of the gas purchased that year except a portion of the gas purchased during the month of May, was purchased at 6 cents per thousand. The company therefore purchased 20,971,154 M cubic feet. But it now pays ten cents a thousand for all of the gas which it purchases. That quantity of gas, therefore, would now cost it \$2,097,115.40, and would make the total expense for a year equal \$3,955,059.15.

"The next question is what the production and transmission system, excluding Claremore, Ramona and Inola, should earn, and assuming the contention to be correct that a natural gas producing and transporting company, because of the uncertainty and hazards of the business, is entitled to a return of ten per cent, and that an additional ten per cent is a reasonable charge for depreciation and amortization, what the company should earn is shown by Table III as follows:

TABLE III.

*What Production and Transmission System, including Enid System, but excluding Claremore, Ramona and Inola, should earn.*

Value (Table I) .....	\$14,528,879.86
Plus—Going Concern Value 10% .....	1,452,887.99
Plus—Working Capital (1½ mo. exp. Table II) .....	494,382.39
Total value .....	<u>\$16,476,150.24</u>
10% for return .....	\$ 1,647,615.02
10% for depreciation and amortization .....	1,647,615.02
	<u>\$ 3,295,230.04</u>
Plus—Expenses (Table II) .....	3,955,059.15
Total to earn .....	<u>\$ 7,250,289.19</u>
Less—Revenue from (Daliou Ex. 16):	
Field Gas .....	\$155,709.12
Drilling Gas .....	814,715.19
	<u>970,423.31</u>

Amount to be earned from Enid System and towns and cities on general system....\$ 6,279,865.88

“In the foregoing table the valuation taken is the original cost without depreciation, as shown in Table I. To that is added 10 per cent. for going concern value. In this connection it is proper to state that all of the witnesses who testified on the subject testified that the going concern value of the Oklahoma Natural Gas Company was 15 per cent., and there was no evidence to the contrary. The Commission, however, in the foregoing table has allowed only 10 per cent. for going concern value. To that also is added working capital, which is the company's expenses for 1½ months, being 3-24 of the total expense as shown on Table II. This represents the money which the company is required to keep on hand in order to pay its salaries and wages to its employees and to pay for gas purchased and to pay for machinery and tools and stock carried in the warehouse. This makes a total value for rate making purposes of \$16,476,150.24.

"All of the witnesses who testified on the subject testified that depreciation and amortization would run from 12 to 15 per cent. Allowing, however, 10 per cent. for dividends or interest on the investment, and only 10 per cent. for depreciation and amortization together of which about 3 per cent. would be for depreciation and 7 per cent for amortization, and which would assume the life of the business to be fourteen years, and considering the expenses shown in Table II, the Oklahoma Natural Gas Company would be required to earn \$7,250,289.19 each year. Of this amount it earned, as shown by Dalious' Exhibit 16, testified to by him to be correct, \$970,423.31 from the sale of field gas and drilling gas, which would leave the sum of \$6,279,865.88 to be earned from the towns and cities on the Enid system and on the general system.

"From the foregoing it is easy to calculate what a city gate rate should be, and the same is shown in the following Table IV, to-wit:

TABLE IV.

*What City Gate Rate should be in towns and cities on Enid System and General System.*

Total amount of gas sold during year, (Dalious Exhibit 16) -----	20,289,294 M ft.
Field Gas -----	936,388
Drilling Gas -----	4,398,374
Claremore -----	235,968
Ramona -----	33,945
Inola -----	12,603
	<hr/> 5,617,278 M ft.

Amount sold in towns and cities on Enid

System and general system ----- 14,672,016 M ft.  
 \$6,279,865.88, amount to be earned from towns and cities on Enid and General Systems (Table III), divided by 14,672,016 M ft., amount sold in said towns and cities, equals 42.1c per M.

"Referring to the above table the item of 20,289,294 M feet was the total amount of gas sold by the Oklahoma Natural Gas Company for the year ending May 31, 1920. Of that 5,617,278 M feet were sold for field gas, drilling gas, and in the towns of Claremore, Ramona and Inola, which left

14,672,016 M feet as the amount that was sold in the towns and cities on the general system and on the Enid system. At a city gate rate the Oklahoma Natural Gas Company would of course receive pay for the amount of gas which it delivers into the distributing system of the local distributing companies, whereas under existing arrangements it receives pay only for that portion which it delivers which the local distributing companies sell and which does not leak out. It is to be assumed, however, that the local distributing companies, when they are required to buy the gas at the city gates and pay for all the gas they buy, will reduce their leakage to a minimum, and will eliminate the large leakage which now exists, and that the local distributing companies will buy from the Oklahoma Natural Gas Company and pay for only a slightly larger quantity of gas than they actually sell. In any event, eliminating from Table IV all consideration of leakage, we have, as shown by Table III, \$6,279,865.88 to be earned by the sale of 14,672,016 M cubic feet of natural gas at the city gates, which would require a city gate rate of 42.1 cents per thousand.

"If we assume that the local distributing companies will not correct their leakage, then we would add to the 14,672,016 M feet of gas sold in said towns and cities, an additional 1,800,196 M of gas which leaked from the plants of these distributing companies, and which would make 16,472,202 M cubic feet of gas which the Oklahoma Natural would sell in those towns and cities, and which make a city gate rate slightly in excess of 38 cents per M. The following Table V shows what the city gate rate would be on the same valuation, but allowing only 8 per cent. for return and 10 per cent. for depreciation and amortization, and eliminating from consideration the matter of leakage:

TABLE V.

*What Production and Transmission System, Including Enid System, but excluding Claremore, Ramona and Inola, should earn, allowing only 8% return, and city gate rate necessary to earn it.*

Value (Table I) -----	\$14,528,879.86
Plus—Going Concern Value 10% -----	1,452,887.99
Plus—Working Capital (1½ mo. exp.) -----	494,382.39
Total Value -----	\$16,476,150.24
8% for return -----	\$ 1,318,092.02
10% for depreciation and amortization -----	1,647,615.02
	\$ 2,965,707.04
Plus—Expenses (Table II) -----	3,955,059.15
Total to Earn -----	\$ 6,920,766.19
Less Revenue from Field Gas and Drilling Gas, (Same as in Table III) -----	970,423.31
Amount to be earned from Enid System and towns and cities on general system.---	\$ 5,950,342.88
\$5,950,342.88 ÷ 14,672,016 M ft. = 40.5c per M.	

“The following table VI shows what the city gate rate would be allowing only 8 per cent. for return and 8 per cent. for depreciation and amortization, and eliminating all consideration of leakage:

TABLE VI.

*What Production and Transmission System, including Enid System, but excluding Claremore, Ramona and Inola, should earn allowing only 8% return and 8% for depreciation and amortization, and city gate rate necessary to earn it.*

Value (Table I) -----	\$14,528,879.86
Plus—Going Concern Value, 10% -----	1,452,887.99
Plus—Working Capital (1½ mo. exp.) -----	494,382.39
Total value -----	\$16,476,150.24

8% for return -----	\$ 1,318,092.02
8% for depreciation and amortization-----	1,318,092.02
	<hr/>
	\$ 2,636,184.04
Plus Expenses (Table II)-----	3,955,059.15
	<hr/>
Total to earn -----	\$ 6,591,243.19
Less Revenue from Field Gas and Drilling Gas (Same as in Table III)-----	970,423.31
	<hr/>

Amount to be earned from towns and cities  
on Enid System and General System--\$ 5,620,819.88

\$5,620,819.88 ÷ 14,672,016 M ft. = 38.3c per M.

"The following Table VII shows what the city gate rate must be after depreciating the original cost of the Oklahoma Natural Gas Company's property 18 per cent. and allowing only 8 per cent. for return and 8 per cent. for depreciation and amortization, and making no allowance for leakage. That city gate rate is 35.2 cents per M:

TABLE VII.

*What Production and Transmission System, including Enid System, but excluding Claremore, Ramona and Inola, should earn on depreciated original cost, allowing only 8% for return and 8% for depreciation and amortization, and city gate rate necessary to earn it.*

Value (Table I) -----	\$14,528,879.86
Less Depreciation, 18% -----	2,615,198.37
	<hr/>
	\$11,913,681.49
Plus Going Concern Value, 10%-----	\$ 1,191,368.15
Plus Working Capital (1½ mo. exp.)-----	494,382.39
	<hr/>
Total value -----	\$13,599,432.03

8% for return .....	\$ 1,087,954.56
8% for depreciation and amortization.....	1,087,954.56
	<hr/>
	\$ 2,175,909.12
Plus Expense (Table II) .....	3,955,059.15
	<hr/>
Total to earn.....	\$ 6,130,968.27
Less Revenue from Field and Drilling Gas, (Same as in Table III).....	970,423.31
	<hr/>
	\$ 5,160,544.96

\$5,160,544.96 ÷ 14,672,016 M ft. = 35.2c per M.

"The following Table VIII, shows the production and transmission expense of the Oklahoma Natural on its entire system, including Claremore, Ramona and Inola, for the year ending December 31, 1920, which amounts to \$3,555,533.44.

TABLE VIII.

*Production and Transmission Expenses for year ending  
December 31, 1920, on entire system.*

Production Expense (Daliou Ex. 20, Sched. 1) \$	1,448,542.31
Transmission Exp. (Daliou Ex. 20, Sched. 1) --	546,311.22
Gas Purchased (Daliou Ex. 20, Sched. 1) ----	1,560,679.91
	<hr/>
Total .....	\$ 3,555,533.44

*Note:* As to gas purchased, until April 15, 1920, the Oklahoma Natural paid only 6c per M for gas. From April 15, 1920, it paid 10c per M for the gas which it purchased from Creek County Gas Company and Cushing Pipe Line Company. From October 1, 1920, it has paid 10c per M for all gas purchased.

Total sales of gas were 20,030,786 M ft. (Dal. Ex. 21).

Leakage in El Reno .....	81,421 M ft. (Dal. Ex. 21)
Leakage in Enid .....	16,204 M ft. (Dal. Ex. 21)
Leakage in Guthrie .....	110,308 M ft. (Dal. Ex. 21)
Leakage in Muskogee .....	612,179 M ft. (Dal. Ex. 21)
Leakage in Oklahoma City .....	747,446 M ft. (Dal. Ex. 21)
Leakage in Shawnee .....	139,921 M ft. (Dal. Ex. 21)
Leakage in Wagoner .....	92,717 M ft. (Dal. Ex. 21)

Total Leakage in Agency

Towns ..... 1,800,196 M ft.

"In explanation of the foregoing it is proper to state that from January 1, 1920, until April 15, 1920, the Oklahoma Natural Gas Company paid only 6 cents a thousand for all the gas which it purchased. From April 15, 1920, until October 1, 1920, it paid only 6 cents a thousand for all gas which it purchased except a quantity which it purchased from the Creek County Gas Company and the Cushing Pipe Line Company, for which it paid 10 cents. From October 1, 1920, until the end of the year it paid 10 cents per M for all gas purchased.

"Table IX shows what the Oklahoma Natural Gas Company would receive at a city gate rate of 30 cents per M cubic feet, assuming that none of the agency towns corrected their leakage situation; that is to say, assuming that there was the same demand for gas as heretofore and the same supply as heretofore, and that the agency towns permitted the same quantity of gas to leak in their systems as heretofore, and that the Oklahoma Natural Gas Company received 30 cents a thousand for all the gas. It is to be noticed that the drilling gas for the year ending December 31, 1920, amounts to more than the drilling gas for the year ending May 31, 1920.

TABLE IX.

*Entire System.*

Total amount of gas sold in 1920-----	20,030,786 M ft.
Drilling Gas -----	5,590,875 (Dal. Ex. 21)
Field (Wholesale Gas) -----	751,788
	<hr/> 6,342,663
Domestic and industrial gas sold-----	13,688,123 M ft.
Plus leakage in Agency towns-----	1,800,196 M ft.
	<hr/>
Total to be paid for-----	15,488,319 M ft.
	<hr/> 30
	<hr/> \$ 4,646,495.70
Plus Drilling Gas—Dal. Ex. 21-----	1,206,622.68
Plus Field Gas—Dal. Ex. 21-----	130,936.74
	<hr/>
	\$ 5,984,055.12

Compare with amounts to be earned.

"The Commission does not rule that the Oklahoma Natural Gas Company is restricted to the original cost of its property as a rate basis. It does hold, however, that inasmuch as the reproduction cost new, less depreciation, is very much greater than the original cost, then the original cost is the smallest value upon which it could be contended that the rates should be fixed. Since the evidence was taken in this case there have been some slight reductions in the cost of pipe lines and compressor stations and in the cost of labor. The Commission finds that at the time this case was instituted, and at the time the evidence therein was introduced, the value of the production and transmission system of the Oklahoma Natural Gas Company, including the general system and the Enid system, and excluding Claremore, Ramona and Inola, was not less than \$14,528,879.86, plus going concern value and working capital, and that the value of the property at this time is slightly less than that.

"Since that time the price of oil has gone down so that fuel oil is now sold very cheaply in competition with gas.

"During the time covered by the hearings in this cause, and since the closing of the case, the price of gas at the mouth of the well has unquestionably declined until at the present time gas can be purchased at least at one-third less cost to the company at the well than at the time of the hearings. The Commission has an independent knowledge of this fact and, in making the order herein, does not take as conclusive the testimony with reference to the price of gas to the Oklahoma Natural Gas Company shown by it to have been paid as justifying the rate adduced by the tabulations presented at that time.

"Upon a consideration of all the facts and circumstances, the Commission hereby establishes a city gate rate to be charged by the Oklahoma Natural Gas Company to every local distributing system to which it furnishes gas, and to be charged by the Oklahoma Natural Gas Company for gas at the city gates to each and every distributing system owned by the Oklahoma Natural Gas Company itself. Each and every distributing company which shall take gas from the Oklahoma Natural Gas Company, including both the independent distributing companies and those owned by the Oklahoma Natural Gas Company itself, shall receive and accept gas from the Oklahoma Natural Gas Company at the borders

or boundaries of each town and city, and shall pay for the full amount of gas measured into the distributing system at the borders or boundaries of each town and city.

"It has heretofore been the policy of this Commission, based upon what seems to it to be sound business policy, to segregate and divorce field operations of gas companies in the State of Oklahoma from the distributing systems where the company is engaged in the business of both producing and distributing gas. In making this order it in no wise departs from that policy and orders the Oklahoma Natural Gas Company to keep its records with reference to field operations and production separate and distinct from the records and accounts of the distributing end of the business to the end that the Commission may at any time ascertain the relations which exist between the two departments of the business.

"The said city gate rate is hereby fixed at the sum of twenty-five cents net per thousand cubic feet, to be measured at the borders or boundaries of each town and city; provided, however, that for gas bought by the distributing companies and by them sold to patrons or customers using more than 500,000 cubic feet each month, the distributing companies shall pay to the Oklahoma Natural Gas Company only the sum of twenty cents net per thousand cubic feet for the gas used by each consumer of each distributing company in excess of 500,000 cubic feet per month. Each distributing company shall keep a true and correct record of the monthly consumption of gas of each of its patrons who uses more than 500,000 cubic feet in each month, and of the amount of gas in excess of 500,000 cubic feet used by each such patron in each month, to which records and all data sustaining the same the Oklahoma Natural Gas Company, its auditors or other agents, shall have access for the purpose of examining and auditing the same. The amount of gas actually used by each patron over and above 500,000 cubic feet each month shall be paid for by each distributing company to the Oklahoma Natural Gas Company at the rate of twenty cents net per thousand cubic feet. All the remainder of the gas measured by the Oklahoma Natural Gas Company into the lines of the distributing companies shall be paid for by the distributing companies to the Oklahoma Natural Gas Company monthly at the rate of twenty-five cents net per thousand cubic feet. This

reduction in the price of the gas furnished by the distributing companies to large users is made to enable the distributing companies to make a lower rate for industrial gas; but there is no reduction as to the first 500,000 cubic feet purchased for each such user, the reduction being only on the quantity used by each such user in excess of the 500,000 cubic feet in one month.

"All bills shall be payable to the Oklahoma Natural Gas Company by the distributing companies on or before the 15th day of the month following that in which the gas was used.

"The foregoing shall apply to the incorporated town of Carney, which takes gas from the line of the Oklahoma Natural Gas Company; to the Midfield Gas Company, which owns the distributing system in Oilton; to the Southwestern Oklahoma Gas & Fuel Company, which owns the distributing systems in the cities of Duncan and Marlow, and shall be applicable in each city; to the Oklahoma Gas & Electric Company, which owns the distributing systems in the cities of Oklahoma City and El Reno and Enid, and in the towns of Yukon and Britton, and the same shall be applicable in each of such towns and cities; to the Muskogee Gas & Electric Company, which owns the distributing plant in the city of Muskogee; to the Commonwealth Public Service Company and its Receiver, which owns the distributing system in the city of Wagoner; to the Shawnee Gas & Electric Company, which owns the distributing plant in the city of Shawnee, and to the Guthrie Gas, Light, Fuel & Improvement Company, which owns the distributing plant in the city of Guthrie; and to any and all other distributing plants which may take gas from the Oklahoma Natural Gas Company, whether herein specifically named or not, and to their successors and assigns, as well as to the plants owned by the Oklahoma Natural Gas Company, except Claremore, Ramona and Inola, which will be heard separately."

#### APPELLANT'S EVIDENCE IN CHIEF.

##### *Affidavits of R. C. Sharp.*

A number of affidavits covering different phases of the controversy were made and filed by R. C. Sharp in behalf of the appellant, and affidavit No. 1, made on December 30, 1921, was in substance as follows (Tr. 115-6):

I am appellant's vice-president, and have been active in the management of its affairs since September 25, 1917. Its financial condition, due entirely to the fact that its rates for gas have been and are grossly inadequate, is desperate. It has a funded indebtedness of \$1,010,000. It has a current indebtedness as follows: Accounts payable \$192,231.22; notes payable, \$1,661,362.52; indebtedness for gas purchased, now due and payable, \$260,566.86; consumers' security deposits as of October 30, 1921, \$282,632.10; deposits made with it for drilling gas, \$54,388.00. The notes payable above mentioned are money which appellant has had to borrow to pay its current operating expenses. It now owes \$45,000 to the National Supply Company and the Butler County National Bank, which was due on December 27, 1921, and which it has been unable to pay. It also owes \$344,638.37, which is due in January, 1922, for borrowed money used in purchasing pipe and drilling wells. It owes \$310,813.46 due in February, 1922, for borrowed money with which it purchased compressing stations and pipe and which it used in drilling wells. It owes the Mellon National Bank of Pittsburgh, the Columbia National Bank of Pittsburgh, the Monongahela National Bank of Pittsburgh, the Butler County National Bank of Butler, and the First National Bank of Emlington, the sum of \$945,000, which is due in April, 1922. It has no money with which to take care of any of this indebtedness.

It has \$120,000 of taxes due the State and the counties in Oklahoma on December 31, 1921. It has no money with which to pay these taxes, and it has endeavored to get extensions thereon, and has procured extensions upon a portion of the same for fifteen days, and upon a part of the remainder for thirty days, and on a portion it has been unable to procure extensions at all. Should these taxes not be paid when due, a penalty of 18 per cent. per annum is charged upon them.

Appellant has been operating as economically and efficiently as it has been possible to do, and its present financial condition is due entirely to the fact that its rates have been and are wholly inadequate to give it a reasonable return upon the value of its property used and useful in rendering its public service. All appellant has made and much more it has been required to put back into the property in order to get and furnish a constantly diminishing quantity of gas to its patrons.

Affidavit No. 2 was merely to the correctness of the copy of the Commission's order No. 1886, which affidavit,

because a copy of said order was attached to the defendants' answer as Exhibit A. thereto, has been omitted.

*Sharp's Affidavit No. 3*, made on December 30, 1921, was in substance as follows (Tr. 116-119):

I attended every hearing had before the Commission upon appellant's application for the increase in rates which resulted in order No. 1886, and heard all the evidence given before the Commission in said cause. The application was filed on August 5, 1920. Numerous hearings were had and a vast amount of testimony taken, and the cause was not finally decided by the Commission until June 25, 1921. The following evidence introduced before the Commission in regard to the value of appellant's property used and useful in its public service was uncontradicted:

First, exhibit prepared by J. M. Gayle, an accountant, and the testimony given by him in regard thereto, said exhibit being an audit of the vouchers of the Oklahoma Natural Gas Company which were used in purchasing and constructing its property used and useful in its public service, which Mr. Gayle testified amounted on October 31, 1919, to \$16,190,382.40, for all of which said Gayle found and audited the actual vouchers, excepting only for property amounting to the sum of \$9,588.91, for which sum vouchers were missing.

Second, exhibit prepared by H. E. Musson, and his testimony in regard thereto. He testified that he had made an inventory and appraisal of appellant's property used and useful in rendering its public service on two bases: First, on the basis of its original cost as of October 31, 1919, which he found to be \$16,061,960.70; and second, upon the basis of replacing or reproducing the property on October 31, 1919, which he found to be \$33,023,258.94. He testified that the appraisal on both the original cost and the reproduction basis were exclusive of any and all additions to the property made since October 31, 1919, and were exclusive of going concern value and working capital, and were without depreciation. He testified that the going concern value of the property was 15 per cent. of the sum of the value of the various units comprising it, and that depreciation was 18 per cent., making the property 82 per cent. efficient.

Third, exhibits prepared by M. E. Durham, appraisal engineer of the Corporation Commission, and the testimony of Mr. Durham in regard thereto, the important parts of

which have been transcribed and certified, and were introduced in evidence before the court.

Fourth, the testimony of J. E. Dalious, appellant's auditor, in regard to additions to the property made after October 31, 1919.

The evidence before the Commission all showed without contradiction that the going concern value of appellant's property used and useful in its public service was 15 per cent. of the sum of the value of the various units composing said property, and that said property was 82 per cent. efficient.

From the order of the Commission prescribing appellant's rates the latter appealed to the Supreme Court of Oklahoma prior to the institution of this suit; and it also applied to the Supreme Court for a supersedeas, suspending the enforcement of the rates prescribed by the Commission during the pendency of the appeal, and the Supreme Court refused to grant said supersedeas. The record in said cause in the Supreme Court consists of about 1,500 pages of typewritten testimony, in addition to the pleadings of the various parties, and of 49 different exhibits. Of the exhibits, ten are large books averaging about 300 pages each, and the other 39 will probably average fifty pages each. The record is extremely voluminous, and its transcription has been but recently completed by the Commission's reporters. Considering the amount involved, the vastness of the record, the preparation of the case for submission to the Supreme Court of Oklahoma will be laborious and will require several months, so that a decision can not be had therein for many months to come.

Affiant has investigated the period of time which the Supreme Court of Oklahoma ordinarily takes in deciding rate cases appealed from the Commission, and has learned the following facts, to-wit:

Case No. 8904 in the Supreme Court of Oklahoma, entitled *Mangum Electric Company v. City of Mangum*, was an appeal from an order of the Corporation Commission reducing electric rates in the City of Mangum, which was filed in the Supreme Court of Oklahoma on February 8, 1917, and was not decided in said court until April 30, 1918.

Case No. 9084 in the Supreme Court of Oklahoma, entitled *City of Pawhuska v. Pawhuska Oil & Gas Company*,

was an appeal from an order of the Commission fixing gas rates in the City of Pawhuska, filed in the Supreme Court on April 27, 1917, and decided on July 31, 1917. In that case and in the Mangum case, nothing was involved except the local gas property in the City of Pawhuska and the local electric property in the City of Mangum.

Case No. 12,066, *City of Bartlesville v. Corporation Commission*, was an application filed in the Supreme Court of Oklahoma by the City of Bartlesville for a writ of prohibition to the Corporation Commission, to prevent its fixing gas rates in the City of Bartlesville. The case involved merely a question of law and not the examination of a large record. The case was filed in the Supreme Court on February 18, 1921, and was decided on June 14, 1921.

Case No. 12,358, *Oklahoma Gas & Electric Company v. Corporation Commission of Oklahoma*, was an appeal from an order of the Commission reducing electric rates, which order was not made upon a valuation of the property of the company, but merely upon the fact that the fuel cost of the company had been reduced. The record was very small. The appeal was filed on June 8, 1921, was decided by the Supreme Court on October 18, 1921, and the petition for rehearing denied on November 8, 1921.

Case No. 11,228, *Eagle-Picher Lead Company et al. v. Henryetta Gas Company*, was an appeal from an order of the Commission fixing rates for gas for the Henryetta Gas Company. It was filed in the Supreme Court on February 1920, and has not been decided yet.

In the average case appealed from the Commission, where the property involved is only that serving one town, and the record is small and the exhibits few, it ordinarily requires all the way from four months to a year in which to obtain the decision of an appeal in the Supreme Court. After such decision no mandate goes down for fifteen days, during which time the losing party has the right as of course to file a petition for rehearing; and upon the filing of a petition for rehearing within said time then the mandate is stayed ordinarily until the determination of the petition. In addition to that, if it is made to appear that more than fifteen days is required in which to prepare and file a petition for rehearing, an extension of time is ordinarily granted, and during said time the mandate of the court is stayed.

None of the cases hereinbefore mentioned involved property serving more than one town. In all of them the values were small and the record small. In appellant's case there is involved a production and transmission system, including a pipe line system of 1,400 miles, with its attendant compressors and other equipment, which production and transmission system has a value in excess of fifteen million dollars. Also there is involved appellant's distributing plants in some 25 or 30 towns and cities. It would require many months to prepare this case for submission in the Supreme Court of Oklahoma, and many additional months for the determination of the appeal.

*Sharp's Affidavit No. 4*, made on December 12, 1921, was in substance as follows (Tr. 120-130):

Appellant's authorized stock is \$15,000,000, of which \$14,300,000 has been issued and is outstanding. It has outstanding \$1,010,000 of bonds and a floating indebtedness in the sum of \$2,244,761, all of which and much more has been invested in property used and useful in rendering its public service. Of said floating indebtedness \$1,640,000 consists of short time notes given for money borrowed by appellant, and the remainder consists of accounts payable. In order that appellant might borrow this money from the banks, it was necessary that three of its directors endorse the same. The amount of said indebtedness has grown to such an extent that appellant's directors are no longer willing to endorse additional paper for it and have refused to do so; and appellant has now reached a stage where it is unable either to issue and sell additional bonds or to borrow additional money.

The volume of business done by appellant has been decreasing each year since 1917, and at the same time the expense of doing business and its capital investment have been steadily increasing each year. In 1917 appellant sold in excess of 29 billion cubic feet of gas. In 1918 it sold 27,225,102 M cubic feet. In 1919 its total sales were 21,997,179 M cubic feet. In the calendar year 1920 its total sales were 20,030,706 M cubic feet. For the year beginning November 1, 1920, and ending October 31, 1921, its total actual sales from all its properties, measured by the meter readings of its consumers, amounted to only 13,740,290 M cubic feet.

The cost of gas in the field has been steadily increasing.

Originally a gas well could be purchased for a hundred dollars. Then gas cost  $2\frac{1}{2}$  cents a thousand at the mouth of the well. Later it went to 3 cents a thousand. In 1918 appellant was required to raise its price to 6 cents a thousand; and ever since October, 1920, it has been required to pay 10 cents a thousand for all the gas it has purchased.

All the gas fields from which appellant originally obtained its gas have long since been exhausted, and many new fields to which it has built lines have also been exhausted. By the year 1917 appellant's supply of gas was inadequate, and in order to obtain additional gas it was required to and did build new pipe lines to new fields at a cost of \$974,473.09, which was new money furnished by the stockholders. Its net earnings in its entire production, transmission and distributing business for that year, after deducting its usual and ordinary operating and maintenance expenses, but making no allowance for either depreciation or amortization, were \$78,767.58, and the cost of the new lines was not reckoned as an expense, but as an additional investment.

In 1918 appellant's net earnings in its entire gas business after paying its ordinary operating expenses, but making no allowance for either depreciation or amortization, were \$1,225,753.52; but in order to continue to furnish gas appellant was required to and did build additional pipe lines and compressor stations during said year at a cost to it of \$1,632,004.72.

In 1919 appellant's net earnings after paying its ordinary operating expenses, but making no allowance for either depreciation or amortization, were \$1,343,579.33; but in that year it was required to and did build new pipe lines to new gas fields which cost it \$1,419,667.39.

In the year 1920 appellant's net earnings, by making no allowance for amortization or depreciation were \$1,460,748.02, and during the same year it was required to and did build new pipe lines to new gas fields which cost it \$1,528,195.81.

During the four years from 1917 to 1920, inclusive, appellant's net earnings, by making no charge for depreciation or amortization, totaled \$4,108,848.45; and during the same time it was required to make additional investments amounting to \$5,554,341.01 in order to continue to sell a constantly dwindling supply of gas.

The new pipe lines and compressor stations were not

built out of earnings, but with new money put into the business by appellant's stockholders. They were not built for the purpose of enlarging or increasing the volume of appellant's business, or for the purpose of acquiring new customers or patrons, but merely for the purpose of being able to continue to serve those whom appellant was already obligated to serve with a constantly diminishing supply of gas.

Appellant now has approximately 1,400 miles of pipe line. The distances which it is now required to transport its gas, the increased cost of gas in the field, the increased cost of producing it, the increases which appellant has been required to make in its investment in order to get and furnish gas, and the increase in its operating expenses and taxes, the increased cost of operating compressor stations on account of the decrease in the rock pressure in the wells, the far extension of appellant's lines, and the increased number of employes thereby made necessary, make the cost of furnishing gas such that appellant can sell but little industrial gas in competition with coal and fuel oil.

Affiant has been a close and careful observer of the development of gas fields in the State of Oklahoma since 1917, and of the life and depletion of the fields, and affiant has carefully studied the reports of the United States Geological Survey upon said gas fields, and in affiant's best judgment it will be impossible for appellant to continue in business for a longer period than eight years from this date, and it is highly probable that that period of time will be cut in half.

Affiant then sets out the cost of the various additions which have been made to appellant's properties since October 31, 1919, the date of the inventory and appraisal, and states that they were all used and useful in rendering appellant's public service.

The going concern value of appellant's property was and is 15 per cent. of the aggregate value of the various units composing same, and all the testimony before the Commission was to that effect, and there was no evidence to the contrary.

Appellant's working capital in carrying on its business amounts to its expenses for one and a half months, and it has been customary for the Corporation Commission to allow such sum to all utilities.

In valuing appellant's production and transmission property, even on the original cost basis, the Commission excluded property owned by appellant and necessary for the public service, and which cost appellant the sum of \$688,027.78, the facts with respect to which were and are as follows:

Appellant was and is required to be constantly building lines to new wells and new gas fields, and to be drilling new wells, and repairing its lines and building and repairing compressor stations. For that reason it was and is required to keep in stock and on hand in its various warehouses for use in its production and transmission systems, mains and other pipe, fittings, casings, and other such supplies. One of such warehouses is located in Tulsa, and the stock therein inventoried on the basis of original cost \$609,404.32. Another such warehouse was situated in Cement, and the stock therein inventoried \$65,082.30. Another such warehouse was situated in Blackwell, and the stock therein inventoried \$8,604.18. Also appellant owned land in Enid costing \$1,400, and buildings situated thereon costing \$5,336.92 upon which was situated its regulator station, regulating the flow of gas into the Enid distributing plant, which was owned by the Oklahoma Gas & Electric Company. In the inventory and appraisal made by the engineers both for appellant and for the Commission they listed the said warehouse stock in Tulsa as being a part of the Tulsa distributing system, and did not place the same in appellant's production and transmission property. They also listed the said property in Enid, Blackwell and Cement as being in those towns, although appellant owned no distributing system in either of those towns and received no revenue from either of those towns, and they omitted to place the same in appellant's production and transmission property. This was thoroughly explained in the evidence introduced before said Commission. In determining the value of appellant's production and transmission property, the Commission did not include the property in Enid, Blackwell and Cement, and as appellant owned no distributing system in either of those towns said property was not considered at all in fixing any rates for appellant. The Commission properly deducted the warehouse stock in Tulsa from the inventory of the Tulsa distributing system, but did not add the same to the inventory of the production and transmission property. The Commission's auditor stated that the ware-

house stock was properly part of the working capital, but in the tables used by said Commission a working capital of only \$494,382.39 was allowed for the production and transmission part of the business, whereas if said warehouse stock should be considered as working capital, then there is also the money which appellant is required constantly to keep on hand for the payment of salaries and wages, for gas purchased and for other expenses; and its working capital would have to be in excess of a million dollars.

Appellant has operated under the rates fixed by the Commission in its said order in its own distributing plants, and as to all the independent distributing companies which it serves, except those owned by the Oklahoma Gas & Electric Company, which appealed from said order and obtained a supersedeas thereof. The latter company has recently dismissed its appeal, however, and applying the said rates so fixed by the Commission to all of the business done by appellant from July 1, 1921, appellant has suffered an actual out of pocket deficit amounting to \$72,118.25 for the month of July, 1921; \$68,162.30 for the month of August, and \$84,071.81 for the month of September. Complete figures have not yet been compiled respecting the month of October, as full settlement has not yet been made for said month. The figures given above are exclusive of any interest or dividend on the investment, depreciation on the property or amortization thereof; and include only the actual excess of expenses over gross income.

The averments in appellant's bill as to the result of applying the rates prescribed by the Commission to the business done by appellant for the year beginning November 1, 1920, and ending October 31, 1921, are true and correct, and affiant adopts the same in this affidavit without specifically restating them.

Prior to July 1, 1921, appellant did not keep meters at the city gates or town borders of the towns and cities in which it owned the distributing systems, so that it was not able to determine with accuracy the leakage in said plants prior to said time. On said date it installed meters at the town borders of each town and city which it served directly, and since then has measured the gas put into the distributing system of each of said towns and cities. In July, 1921, the leakage, shrinkage and unaccounted for gas in all of the dis-

tributing plants owned by appellant averaged 27.6 per cent. of the amount of gas delivered into said plants. In August, 1921, the said leakage averaged 16.6 per cent. In September, 1921, the same averaged 23.4 per cent. In October, 1921, the same averaged 27.8 per cent., and in November, 1921, the same averaged 21.3 per cent.

The Commission has never heretofore prescribed any standard of leakage and shrinkage to which it undertook to require any gas company to conform. In order No. 1886 it purported to allow appellant a leakage of only 10 per cent. The actual leakage is far in excess of said sum. The rates which appellant has been permitted to charge for its gas have never, since this affiant has been connected with it, been sufficient to enable it to earn or set aside any sum with which to take care of depreciation on its property or to amortize any portion thereof or to correct the leakage therein. The leakage and shrinkage in appellant's distributing plants is not in excess of the usual and ordinary amounts generally prevailing in all natural gas distributing systems in the State of Oklahoma. In Tulsa and Sapulpa, served by appellant, the electric street railway companies' lines are not properly bonded, and considerable deterioration results to appellant's pipes and mains from electrolysis, which appellant is unable to stop. In Tulsa, Sapulpa, Claremore and Haskell the streets and alleys are for the most part paved, and appellant's pipe and mains are covered with pavement, and to take up said pipes and undertake to correct the leakage therein would cost far more than could be saved by the correction. To open the pavement and correct the leakage in appellant's distributing system in Tulsa would cost almost as much as it would to construct a new distributing system.

Considering the depreciation on its property, the fact that its business is limited in duration by the limited supply of gas available to it, and considering also the necessity for amortizing the investment against the time when the supply of gas will be exhausted and its property will become worthless, appellant has in fact made no money, and it has merely been using up its investment in serving the public.

There has not been a time since affiant has been connected with appellant when the latter's earnings have been sufficient to set aside any sum in any year for depreciation or amortization, after paying a dividend of 8 per cent.

Appellant's business is so hazardous that appellant can not sell its bonds at a reasonable price in the market; and it has therefore been required to borrow money on short time notes, with its directors personally endorsing the same, with which to defray a portion of its operating expenses and to build some of its new lines.

Appellant's taxes and other out of pocket expenses for its production and transmission system, excluding Claremore, Inola and Ramona, for the year ending October 31, 1921, were \$3,814,422.09; and this was exclusive of depreciation, amortization, interest or dividend on the investment, and of the expense of new lines to new fields. Applying the schedule of rates prescribed by the Commission in its said order to the business done by appellant's production and transmission property during said year ending October 31, 1921, would have brought a gross income for said property of \$4,113,501.90, and would have left appellant only the sum of \$299,079.81 as a net income with which to pay interest or dividend on the investment, to take care of depreciation, and amortize the investment against the time when the supply of gas available to said property will be exhausted.

The business of producing, transporting and furnishing natural gas for public use in the most hazardous of all kinds of public service. There is no natural limitation to the life of any other public utility; but inasmuch as a natural gas company deals in a commodity which can not be made by man, and the supply of which is limited, exhaustible and not recreatable, the duration of a natural gas company's business is limited; and its investment becomes worthless except for what it will bring as junk when the supply in worthwhile quantities is exhausted. For said reason an investment made in the natural gas business is in greater jeopardy than that in any other public utility, and the return thereon ought to be commensurately greater.

Ten per cent. per annum is as little as persons who have invested their money in banking, in merchandising, and in other such forms of business in Oklahoma expect to receive thereon; and a natural gas company is entitled to an earning of 10 per cent. on its investment over and above the necessary earnings for paying its expenses, taking care of depreciation and amortizing its property. On November 16, 1921, the Commission recognized this fact, and held that the Southwestern

Oklahoma Gas & Fuel Company, which serves the cities of Duncan and Marlow and which purchases its gas from appellant's production and transmission properties, was entitled to an earning of 10 per cent for interest or dividend upon the investment, and an additional 10 per cent for depreciation, in view of the hazardous nature of the business. A true and correct copy of the Commission's order is hereto attached, marked Exhibit A and made a part hereof (Tr. 131-134). The business of said Southwestern Oklahoma Gas & Fuel Company can not be more hazardous than is appellant's business, for the reason that that company's supply of gas will not fail until appellant's supply fails.

in the said order of the Commission marked Exhibit A to the affidavit the Commission said (Tr. 133):

"It has been shown that these utilities have enjoyed but scant prosperity during the term of their existence, and that they have not been able to earn sufficient to pay a fair and reasonable return upon the amount of capital invested, and nothing whatever for depreciation and wear and tear on the property. In view of this the Commission is of the opinion that a depreciation reserve from this time forward amounting to 10 per cent. will be just and reasonable, and that in view of the hazardous nature of the business a return on the capital invested of a like sum, that is 10 per cent., is just and fair."

Natural gas contains about twice the heating units of artificial gas, and on the basis of its actual value as compared with artificial gas is intrinsically worth to the domestic consumer not less than two dollars a thousand.

Appellant is required to purchase its gas in the northern and northeastern portions of Oklahoma in competition with the Kansas Natural Gas Company, the Empire Gas Company, and the Wichita Pipe Line Company, which purchase gas in Oklahoma and transport the same to Kansas and Missouri, and which said companies receive for their gas in Kansas and Missouri rates ranging from 56 cents to one dollar per thousand. Appellant is also required to purchase its gas in southern Oklahoma in competition with the Lone Star Gas Company, which transports the same to Texas, no further than appellant transports its gas, and which receives in Texas a net domestic rate therefor of 67½ cents per thousand. Attached to this affidavit as Exhibit B (Tr. 134-136) is a true copy of the contract entered into by the City of Ft. Worth

and the Ft. Worth Gas Company, which obtains its gas from the Lone Star Gas Company, which copy of said contract was furnished this affiant by the Corporation Commission of Oklahoma. The same rates for gas exist in Dallas, Texas, as are shown by the contract with respect to Ft. Worth.

Illustrative of the uncertainty of the natural gas business and the short life of the gas fields, affiant states that in 1920, John C. Keys, who furnished gas in the City of Lawton, and who had what was thought to be a very large and productive gas field, had a rate case before the Commission in which he contended for an allowance for amortization sufficient to amortize his property in seven or eight years, which was refused by the Commission. Keys' gas field is now practically exhausted, and his company, which furnished gas in Lawton, is now in the hands of a receiver. Attached to this affidavit as Exhibit C thereto (Tr. 136-140) is a copy of an official report upon the Keys gas field made to the Corporation Commission by J. W. Duvall, gas engineer of said Commission, and J. G. Adams, conservation official of said Commission.

Appellant runs a portion of the natural gas which it sells through gasoline absorption plants which it owns and which are located in the towns of Kellyville, Stroud, Sumpter and Shamrock. The gas is run through said plants for two purposes: First, for the purpose of drying and cleaning the gas and removing impurities, moisture and dirt therefrom, thereby causing a more even flow of gas through the lines, and the better combustion thereof; and second, for the purpose of acquiring the gasoline which may be extracted from said gas. Appellant has an investment in excess of \$350,000 in its said gasoline plants. For the year ending December 31, 1920, its net profit upon the operation of said plants was \$48,985.65; and for the nine months of the year 1921, ending September 30, 1921, appellant suffered a net deficit in operating said plants of \$2,609.46.

H. E. MUSSON.  
(Tr. 141-145).

The affidavit of H. E. Musson made on December 9, 1921, was in substance as follows:

I live in Oklahoma City, am forty-four years of age, and

am a member of the firm of Musson and Gayle, engineers and accountants. Have been an appraisal engineer for seven years, and for fifteen years prior to that was a construction engineer. From November, 1913, to November, 1917, I was engineer of the Corporation Commission in charge of the telephone, gas and electric department, and a part of my duties was to make inventories and appraisals of telephone, electric light and natural gas plants. In November, 1917, I became vice president and general manager of the Henryetta Gas Company, the Henryetta Public Service Company and the Belleview Oil & Gas Company, and held that position for a year, after which I resigned and opened an office in Oklahoma City as a consulting and appraisal engineer, and I have been practicing my said profession ever since.

Since I resigned from the Commission I have been employed by it on special occasions to make inventories and appraisals of property. I have made numerous appraisals of natural gas, electric light and other public utility properties for other persons and corporations.

I made an inventory and appraisal of all the public utility property of the Oklahoma Natural Gas Company, completing the same on October 31, 1919. I made them on two different bases, one upon the basis of the original cost of the property, and the other upon the basis of the reproduction cost, each as of October 31, 1919. I found the original cost of the appellant's production and transmission property, including Claremore, Inola and Ramona, and excluding going concern and working capital, and without depreciation, to be \$14,281,015.48.

I found the original cost of its distributing systems, exclusive of going concern value and working capital and without depreciation, to be as follows:

Tulsa .....	\$1,117,882.52
Turley .....	1,707.67
Wellston .....	11,212.55
Arcadia .....	5,036.40
Chandler .....	48,981.95
Coweta .....	27,022.81
Davenport .....	8,882.36
Dawson .....	9,685.87
Deer Creek .....	3,884.54
Depew .....	8,541.29

Edmond -----	42,475.18
Haskell -----	36,962.67
Hunter -----	9,317.27
Kellyville -----	6,585.71
Lamont -----	13,838.44
Luther -----	5,669.38
Midlothian -----	7,865.96
Meeker -----	7,865.96
Nardin -----	4,479.25
Peckham -----	3,720.29
Pond Creek -----	18,860.19
Porter -----	11,707.24
Red Fork -----	22,717.03
Sapulpa -----	226,475.32
Shamrock -----	18,876.38
Stroud -----	29,137.45
Inola -----	19,022.86
Claremore, including both transmis- sion, production and distribu- tion systems -----	467,405.28

The foregoing included no additions made either to the production or transmission property or to the distributing plants after October 31, 1919. (A statement of the values of said properties on the original cost basis is attached to the affidavit as Exhibit A thereto, Tr. 146-173.)

I found the value of said property upon the basis of reproduction cost new, exclusive of going concern value, and working capital, and without depreciation, to be as follows:

Production and transmission prop- erties, excluding, however, Clare- more, Inola and Ramona -----	\$29,812,750.75
Tulsa -----	1,890,442.25
Turley -----	3,218.89
Wellston -----	19,864.87
Arcadia -----	8,667.31
Chandler -----	79,425.30
Coweta -----	47,969.22
Davenport -----	14,694.43
Dawson -----	19,767.10
Deer Creek -----	8,114.76

Depew -----	13,567.24
Edmond -----	71,062.51
Haskell -----	75,196.15
Hunter -----	16,584.53
Kellyville -----	11,105.60
Lamont -----	26,150.24
Luther -----	9,805.06
Midlothian -----	3,692.67
Meeker -----	13,579.90
Nardin -----	6,967.52
Peckham -----	6,372.34
Pond Creek -----	32,849.61
Porter -----	18,883.13
Red Fork -----	50,433.07
Sapulpa -----	426,703.33
Shamrock -----	32,292.18
Stroud -----	51,444.92
Inola -----	30,702.92
Claremore, including production, transmission and distribution systems -----	894,049.71

(A statement of the value of said properties on the basis of reproduction new is attached to the affidavit as Exhibit B thereto, Tr. 175-201.)

The foregoing includes no additions made to any of said property after October 31, 1919.

I have been familiar with appellant's property since November, 1913. In my judgment, the going concern value of said several properties is 15 per cent. of the aggregate of the values of the various physical units comprising said property. By going concern value I mean the excess in the value of said properties as a going concern, with all of the various units composing it assembled, installed, co-ordinated, and in operation as a going concern, and with an established business, over the value of the bare bones of the property.

The present reproduction value of appellant's properties owned on October 31, 1919, and not considering any additions which have been made since, while not so large as the reproduction value on October 31, 1919, is nevertheless about 30 per cent. greater than was the original cost of said property.

On October 31, 1919, considering the additions that had

been made to said properties from time to time during the preceding years, which was new construction, the depreciation on the whole amounted to not more than 18 per cent.

The present fair value of appellant's production and transmission property which was owned on October 31, 1919, exclusive of Claremore, Inola and Ramona, considering going concern value and working capital and deducting depreciation, is not less than \$19,000,000; and this does not include any additions made since October 31, 1919.

Appellant has been required to make very extensive and expensive additions to its property each year since and including 1917, in order to be able to get and furnish gas to those it was already obligated to serve.

While I was with the Commission, and ever since, I have very carefully observed the gas developments in the State of Oklahoma and the life of the gas fields and the depletion thereof, and the necessity of building new lines to new fields; and from my observation of said matters my judgment is that a supply of natural gas in worthwhile quantities will not be available to appellant for a longer period than eight years from this date, and that it is entitled to amortize its investment upon that basis.

The business of furnishing natural gas, considering the short life of the fields in Oklahoma, is the most hazardous and risky in its nature of all the kinds of public service in which one may enter, and the investments in that hazardous business are in greater jeopardy than investments in any other class of public service and run a greater risk of loss.

In the inventory and appraisal of appellant's property which I made, I found that its warehouse stock in Tulsa, Oklahoma, inventoried on the basis of original cost \$609,404.32. I placed this in the inventory under the heading "Tulsa" because it was situated in Tulsa. Another such warehouse was situated in Cement, and the stock therein inventoried \$65,082.26. Another such warehouse was situated in Blackwell, and the stock therein inventoried \$8,604.18. Also appellant owned land in Enid costing \$1,400.00, and buildings thereon costing \$3,536.92, which were used and useful in furnishing gas to the distributing plant in Enid. In making up my inventory and appraisal, I listed the warehouse stock in Tulsa under the heading "Tulsa" as above stated, and did not place the same in appellant's production and transmission property. I also listed the property in Enid, Blackwell and Cement as being in those towns, although appellant owned

no distributing system in either of them and received no revenue from either of them. In the Commission's order it deducted the warehouse stock in Tulsa from the inventory of the Tulsa distributing system, but it did not add either that warehouse stock, or the property in Enid, Blackwell and Cement to appellant's production and transmission property; and the result was that in the Commission's order property of appellant used and useful in its production and transmission system recently acquired, and costing \$688,027.78 was omitted altogether in fixing appellant's rate base.

All the property inventoried by me, the values of which have been given above, was property used and useful by appellant in procuring, transmitting and distributing gas to the public.

Natural gas contains about twice the heating units of artificial gas, and upon the basis of its actual value as compared with artificial gas is worth to the domestic consumer not less than two dollars a thousand cubic feet.

**SAMUEL S. WYER.**

(Tr. 202-6).

The affidavit of Samuel S. Wyer, made on December 16, 1921, was in substance as follows:

I am a consulting engineer, and reside in Columbus, Ohio. Was educated in the Ohio State University, taking the degree of Mechanical Engineering. For ten years I have given practically all my time to natural gas problems, acting as consulting engineer for both gas companies and the public. During the war I was Chief of the Natural Gas Conservation Department of the United States Fuel Administration. I have acted as a consulting engineer on natural gas conservation for the United States Bureau of Mines, and have also acted in an advisory capacity for said Bureau a number of times in the last five years. From January 1, 1920, to March, 1921, I had charge as consulting engineer of the entire natural gas conservation program of the United States Bureau of Mines in all the gas using states. I have acted in an advisory capacity for the Smithsonian Institution, and I prepared one of the bulletins which said institution published as a part of its series on mineral conservation, the bulletin being entitled "Natural Gas, Its Production, Service and Conservation." I prepared the manuscript for what is known as Technical

Paper No. 257 on "Waste and the Correct Use of Natural Gas in the Home," which was published under the supervision of the United States Bureau of Mines. I have also acted a number of times as consulting engineer for the United States Bureau of Standards on natural gas matters, and in 1921 I acted as consulting engineer for the Bureau of Mines of the Canadian Government and made an exhaustive study of the natural gas resources of the Province of Ontario. I have acted as a consulting engineer for the British Empire Trust Company of London, England, with regard to its Canadian natural gas holdings. I have been employed by and have acted for the Ohio Public Utilities Commission and the Public Service Commission of the Commonwealth of Pennsylvania, and also for the City of Dayton, Ohio. Also, during the last ten years I have been employed by a large number of natural gas companies, and have examined and appraised about three-fourths of the natural gas industries in North America.

The average leakage in the natural gas systems in the United States, from the well to the consumer's burners, is 35 per cent of the gas annually put into said systems; and the average leakage in the natural gas distributing systems in the United States is 15 per cent. of the amount of gas annually delivered into said distributing systems. I have examined appellant's distributing plants, and also numerous other natural gas distributing systems in Oklahoma; and the average leakage prevailing in the gas distributing systems in the State of Oklahoma is considerably in excess of 20 per cent. of the amount of gas annually delivered into them.

I have carefully examined the appellant's distributing plants in Tulsa and Sapulpa. The streets and alleys in both of those cities are paved, the paving having a concrete base, and being surfaced in some instances with asphalt and in others with paving brick. The tracks of the street railways in both cities are inadequately bonded, so that currents of electricity leak off said tracks and get on to appellant's underground pipe, and then where such stray currents leave such pipe they produce a pitting action, called electrolysis, that soon produces holes in the pipe, thereby increasing the leakage possibilities. This is without fault on appellant's part, and can be remedied only by the street railway company. In my judgment, after a careful survey of the situation in

Tulsa and Sapulpa, it would cost appellant half as much to correct the leakage in said two cities as it originally cost to construct the distributing plants therein.

The correction of the leakage in the pipe lines and distributing systems of natural gas companies is primarily a conservation measure, and is one of primary interest to the public, because natural gas is the best, most convenient and cheapest fuel known, and it is to the public interest that the supply be conserved as much as possible and the period of service thereby extended as long as possible. For that reason a natural gas company should not be required to stand uncompensated the leakage in its plants, and especially is that true if the rates which it is permitted to charge and collect are no greater than would render a reasonable return upon the value of the property and are not sufficient to set aside in addition to such return an earning for the purpose of correcting the leakage, taking care of depreciation, and amortizing the property.

Since 1912 I have carefully observed and studied the natural gas situation in Oklahoma, noting the discovery and history of its gas fields, and their life and depletion, and the necessity of the gas companies constantly extending their lines to new fields; and from my study, experience and observation of said matters in Oklahoma, it is my opinion that if present conditions continue, and appellant continues to deplete its fields as it has done in the past, then its business will come to an end within four years from this date.

During the spring of 1921 I made a careful and thorough survey of appellant's property. Since 1911 appellant has increased its number of miles of transportation pipe 180 per cent. It has increased its miles of transmission pipe per thousand domestic consumers 34 per cent. It has increased the total of its horse power gas compressors 257 per cent. It has increased the horse power of its compressor station capacity per million cubic feet of gas sold 67 per cent. It has increased its horse power compressor station capacity per domestic consumer 66 per cent.

The average cost of a producing well to appellant since 1911 has increased 590 per cent. The average purchase price of gas paid by appellant has increased 280 per cent. Its total annual taxes have increased 1,362 per cent. Its taxes per thousand cubic feet of gas have been increased 165 per cent.

Its taxes per domestic consumer have been increased 567 per cent. The annual cost of operating its gas compressors has increased 265 per cent. The compressor station operating cost per thousand cubic feet of gas has increased 700 per cent. The operating cost of distributing the gas sold in the distribution systems has increased 475 per cent. The annual distribution cost per domestic consumer has increased 244 per cent.

Since 1917 the average open flow capacity of appellant's gas wells has decreased 45 per cent.; the average open flow capacity of the gas wells from which appellant purchases gas has decreased 54 per cent.; the rock pressure in the Stroud pool has decreased 41 per cent.; in the Mounds pool 73 per cent.; in the Haskell pool 71 per cent.; in the Shamrock-Cushing pool 80 per cent.; in the Broken Arrow pool 50 per cent., and in the Tulsa and Bird Creek pool 54 per cent.; and since 1918 the rock pressure in the Bixby pool has decreased 46 per cent. and in the Claremore pool 54 per cent.

The peak of the gas production in the State of Oklahoma was reached in 1917. Since then the supply of gas has been steadily and constantly decreasing and the cost of producing and distributing the same has been constantly increasing.

Natural gas has about twice the heat units per thousand cubic feet of manufactured gas. The present average price of manufactured gas throughout the United States is \$1.25 per thousand, and upon that basis natural gas is intrinsically worth to the consumer \$2.50 per thousand.

Natural gas is an exhaustible commodity, and when once used is gone forever. Every time a natural gas company sells a thousand cubic feet of gas, it is selling a part of its property and is disposing of a part of its capital. The business is unique in that, with the exception of water companies, it is the only public utility service that does not and can not manufacture the basic element of its service; and the water utilities have their supply constantly replenished by nature. Railroads and street railways, telephone, telegraph and electric light companies can easily create the primary source of their service. A natural gas company is alone in depending entirely on the caprice of nature for first the finding and second the continuity of the supply of its public utility service. The only certain thing about the natural gas business is that always there is an ultimate end of it. For that

reason, it is necessary that, in addition to an earning for interest or dividend on the investment and for taking care of depreciation, a natural gas company be allowed an earning for the purpose of amortizing its investment against the time when the gas available to it is exhausted. No other public utility is required to do that, because nature has placed no limitation upon the duration of their business.

The natural gas business is the most hazardous of all public service, for the reason that it combines a public service with a mining venture, that its basic element is a commodity which man is unable to create, the supply of which is always uncertain, and the exhaustion of which is a certainty. Since the hazards are greater than in any other public utility, the earnings allowed ought to be correspondingly greater. In my judgment a natural gas company should be allowed a sufficient sum for depreciation, not only to take care of its system, but to return to its investors their principal by the time the gas available to it is exhausted. In the case of the appellant, in my judgment, the percentage which it is entitled to earn for said purpose, under the present conditions with which it is faced, is not less than 15 per cent. per annum. In addition to that it should be allowed an earning for dividend or interest upon the investment, considering the hazard of the business, of at least 10 per cent. per annum. Whatever it is required to expend for the correction of its leakage should be deemed an operating charge, a portion of its expense, and additional earnings should be allowed to take care of that.

Having been familiar with this property since 1912, I know that appellant has been required to expend enormous sums running into the millions of dollars each year since and including 1917, in building new lines to new gas fields and in erecting new compressor stations, not for the purpose of increasing the amount or volume of its business which it does, but, on the contrary the amount or volume of its business has been constantly decreasing since 1917; and these additional investments have been necessary for the sole purpose of enabling appellant to continue to serve a constantly diminishing supply of gas to that portion of the public it was already obligated to serve. I know that the additional investments which appellant has made in these new pipe lines and compressor stations since and including 1917 have ex-

ceeded appellant's net income by more than a million dollars, and the investments in new pipe lines and compressor stations have not been counted as an expense in determining the net income. The result is that appellant is being required year after year to pyramid its capital account; and if it is required to continue to treat these new lines and compressor stations as additional investment, the result will be that when the gas is ultimately exhausted and the business comes to an end, all that appellant will have earned and more will have been put into the property, which will then be worthless except for what it will bring as junk. In my judgment appellant's capital account should not be further pyramided, and whatever it is required to expend in new lines and compressor stations to serve its same customers with a decreasing supply of gas should be treated as a part of the expense of serving those customers, and thus wiped out each year.

The present replacement cost of appellant's property is from 20 per cent. to 30 per cent. higher than the original cost thereof.

J. E. DALIOUS.  
(Tr. 207-210.)

The affidavit of J. E. Dalious made on December 12, 1921, and filed herein, was in substance as follows:

I am 35 years of age, have been appellant's auditor since December 15, 1919, and as such have supervision over the keeping of all its books, vouchers and records. Since October 31, 1919, appellant has added to its production and transmission systems property used and useful in its public service costing \$1,232,384.14.

Since October 31, 1919, it has added to its distributing systems, in excess of removals therefrom, property costing the following sums:

Tulsa distributing plant.....	\$489,630.07
Sapulpa distributing plant.....	18,550.08
Chandler distributing plant.....	38,916.08
Coweta distributing plant.....	1,339.26
Davenport distributing plant.....	724.20
Dawson distributing plant.....	523.17
Deer Creek distributing plant.....	627.22
Edmond distributing plant.....	6,031.17

Haskell distributing plant.....	34,433.26
Hunter distributing plant.....	123.14
Kellyville distributing plant.....	1,253.78
Lamont distributing plant.....	565.93
Meeker distributing plant.....	129.62
Midlothian distributing plant.....	31.22
Nardin distributing plant.....	165.61
Peckham distributing plant.....	106.23
Pond Creek distributing plant.....	510.70
Porter distributing plant.....	189.24
Red Fork distributing plant.....	5,302.25
Shamrock distributing plant.....	728.56
Stroud distributing plant.....	1,017.36
Turley distributing plant.....	201.22
Wellston distributing plant.....	1,675.92

Since October 31, 1919, it has removed property in excess of additions thereto in the following named distributing systems:

Depew distributing plant.....	\$ 528.08
Luther distributing plant.....	54.98

Appellant's sales of gas have been decreasing each year since I have been with it. In 1919 its total sales were 21,997,179 M cubic feet. In the calendar year 1920 its total sales were 20,030,706 M cubic feet. For the year beginning November 1, 1920, and ending October 31, 1921, its total sales from all its properties in Oklahoma, including the Claremore, Inola and Ramona systems, for all purposes, amounted to only 13,740,290 M cubic feet.

Appellant has operated under the rates fixed by the Commission in order No. 1886, since July 1, 1921. In July, 1921, it suffered an actual out of pocket deficit of \$72,118.25; in August, a deficit of \$68,162.30; in September a deficit of \$84,071.81. All of appellant's expenses for October have not yet been reported and tabulated, but sufficient have been received to indicate that its deficit in October will exceed that in September. These deficits consist of the excess of appellant's out-of-pocket expenses over its gross income; and they exist without making any allowance to appellant whatsoever for interest or dividend on the investment, or for depreciation, amortization or correcting leakage.

During the year ending October 31, 1921, all the distributing plants served by appellant's production and transmis-

sion property, including those owned by the independent distributing companies, as well as those owned by appellant, excluding Inola, Claremore and Ramona, sold for domestic use 9,100,443 M cubic feet, and for industrial use 1,963,004 M cubic feet, measured by the consumers meters. The average leakage in said distributing plants was and is 20 per cent. of the gas annually deliver into them, so that it was necessary for them to purchase from appellant's production and transmission system 11,375,554 M cubic feet for domestic purposes. At the city gate rate of 25 cents per M prescribed by the Commission's order for domestic gas, the same would have brought appellant's production and transmission system the sum of \$2,843,888.50. In order that said distributing plants might sell 1,963,004 M cubic feet of gas for industrial purposes, it was necessary, because of the leakage, that they procure from appellant's production and transmission system 2,454,755 M cubic feet, which, at the city gate rate of twenty cents per M prescribed in the Commission's order for industrial gas, would have brought appellant's production and transmission system the sum of \$490,751.00, thus making a total of \$3,334,639.50, which would have been received by appellant's production and transmission property from said distributing plants for the gas furnished them at the city gate rate prescribed by the Commission.

In addition thereto during said year appellant's production and transmission property sold 2,633,348 M cubic feet of gas in the oil and gas fields for drilling purposes, and received therefor \$756,791.71; and it also sold to domestic consumers on its field lines, not in any city or town, 53,428 M cubic feet, and received therefor \$22,070.69; making a total gross income from the sale of gas by said production and transmission system of \$4,113,501.90.

The taxes and operating expenses of appellant's production and transmission system for the year ending October 31, 1921, including the cost of gas purchased, was \$3,814,422.09; and this was without any allowance to appellant for depreciation, amortization, interest or dividend on the investment, and the expense of building new lines to new gas fields. This left appellant a net income of \$299,079.81 with which to pay interest or dividend on the investment, take care of depreciation and amortize the property.

Affiant has carefully read the statements contained in

appellant's bill of complaint with respect to the number of cubic feet of gas sold by each of its distributing systems, the number of cubic feet it is necessary that each buy, the distributing expenses and taxes in each system, and the gross income in each of said systems. Affiant compiled the figures and furnished the data upon which said statements in said bill were based; and the said statements so contained in said bill are correct and true, and affiant adopts the same with the same force and effect as though he had repeated the same in this affidavit.

Appellant has an investment in excess of \$350,000 in gasoline absorption plants. This is not included in any of appellant's gas properties, and all the values of appellant's property used and useful in rendering its service to the public are exclusive of the investment in the absorption gasoline plants. During the year 1920 appellant made a net profit of \$48,985.65 upon the operation of its absorption gasoline plants; and for the nine months ending September 30, 1921, it suffered a net deficit of \$2,609.46 in the operation of said plants.

H. L. REDAK.  
(Tr. 210-216.)

H. L. Redak, official reporter of the Corporation Commission during the pendency of appellant's application for increased rates, made an affidavit as to the correctness of the transcript of the testimony of M. E. Durham, which affidavit and testimony was filed in this cause. The substance of Durham's testimony given before the Commission and reproduced in this affidavit is as follows:

I made an appraisal of appellant's physical properties under the direction and supervision of the Corporation Commission. At that time I had charge of the Commission's valuation and engineering work. That appraisal has been introduced as Durham's Exhibit 1. It was made as of September 30, 1919, and took into consideration only the property owned by appellant on that date.

In that appraisal I did not include the labor items in laying appellant's line from Cement to Walters, as the vouchers for the labor items were not then accessible.

My inventory and appraisal contained nothing for overhead charges, nothing for organization expenses, nothing for

engineering and superintendence, nothing for law expenditures during construction, nothing for injuries during construction, nothing for interest during construction, nothing for miscellaneous construction expenditures, nothing for going concern value, and nothing for working capital. I merely inventoried and appraised the actual physical units comprising the property as I found it at that time. By omitting the foregoing items I do not mean to testify that those should not be considered in determining the value of the property for rate making purposes. I omitted those items under instructions from the Commission to give no consideration to them.

I found the value of the actual physical units comprising appellant's property upon the basis of original cost, and undepreciated, as of September 30, 1919, to be \$13,153,651.39. This was the original cost of the bare bones of the property. Mr. Musson in his appraisal found the value of the property upon the basis of original cost to be \$16,061,960.70, including the overheads and intangibles, and the labor items upon the Walters line. Had I given consideration to those matters, there would have been very little difference between Mr. Musson's appraisal and mine. I do not mean to testify that the original cost of the property is the proper basis for making rates. However, if appellant is to be denied appreciation in the value of its property, it ought not to be charged with depreciation thereon. I found that the entire depreciation upon the property on September 30, 1919, amounted to \$2,710,000. Considering that appellant has added about \$1,500,000 of new property since that time, I would say that the weighted average of the depreciation upon the entire property is about 18 per cent.

I am familiar with appellant's property. It should be allowed as working capital its expenses for one and a half months. In my opinion the property has a going concern value of 15 per cent. By going concern value I mean the excess in the value of the property with all its units assembled, installed, co-ordinated and operating as a going concern and with an established business, over the aggregate value of the various units comprising the property considered separately.

The present prices of the labor and material entering into

appellant's property are 70 per cent. higher than those used in determining the original cost of the property.

### **Defendants' Affidavits.**

P. E. GLENN, acting secretary of the Corporation Commission, made an affidavit on January 25, 1922, to the correctness of a transcript of the testimony given by R. H. Bartlett before the Corporation Commission of Oklahoma on May 6, 1918, the substance of which testimony is as follows (Tr. 216-235):

Negotiations for the consolidation of the properties of the Oklahoma Natural Gas Company and of some other gas companies were begun last spring, by the directors of the various companies, and a special committee composed of neutral interests. I was one of the directors acting for the Oklahoma Natural. The merger of the companies was consummated in the fall of 1917. The various companies which merged were not competing companies, but supplied different districts throughout the state with gas. The properties of each company were appraised by the committee before the Oklahoma Natural took them over. The figures at which they were appraised were agreed to by the Oklahoma Natural and the constituent companies as fair and reasonable; and the properties of the constituent companies were paid for in stock of the Oklahoma Natural. The stock was worth par, which was \$25.00 a share. At that time \$4,642,000 additional stock of the Oklahoma Natural was issued, making a total issue of stock in excess of \$8,000,000.

I was not one of the original incorporators of the Oklahoma Natural, but became a small stockholder soon after. The consideration for the issues of the first capital stock of the company were properties, gas wells, gas and gas leases. The greater part of it was situated in the Hogshooter field. The full capital of \$4,000,000 was paid for that. No actual money was paid for the stock when the company was first organized, it was all paid for in property. I had nothing to do with that originally. There were ten thousand acres of leases conveyed to the company in consideration for that stock.

The companies which were merged into the Oklahoma Natural in the fall of 1917 were on a dividend paying basis

at the time of the merger. The outstanding capital of the Caney River Gas Company was \$1,000,000, the Osage and Oklahoma \$1,500,000, the Oklahoma Fuel Supply Company \$250,000, the Peoples Fuel Supply Company \$100,000, and the Enid Natural Gas Company \$200,000.

Those companies had more or less cash put in them when they started. I am not familiar with their original organization. The Osage and Oklahoma Company, which went into the merger, bought acreage in the Osage Nation, paying therefor \$1,250,000. The stock was sold to make payment in cash. Mr. Braden bought that company from Heasley and his associates in 1910, and paid a million dollars for it.

In 1917 we sold in the towns 17,151,000 M cubic feet, and in addition we sold approximately ten billion in the fields. We also sold some gas to the Kansas Natural that year, but not so much as ten billion feet.

The Oklahoma Natural has a small oil business. Its oil properties and oil business are kept entirely separate from its gas properties and gas business. When we drill a well in oil territory or on an oil lease, we charge the expense thereof to the oil business, whether the well is a producer or a dry hole. When we drill a well in gas territory for gas, we charge the expense to the gas business, whether it is a producer or a dry hole.

The company has about two hundred thousand acres of leases, 107,000 acres in the Osage. We go out in the Osage two or three miles in advance, wildcatting as a rule. There are many instances where producing wells have been drilled next to dry holes, and vice versa. When we drill in wildcat territory, 95 per cent. of the time we are wildcatting for gas.

We are no longer furnishing gas to the Kansas Natural. We ceased doing that months ago.

F. C. CARTER.  
(Tr. 236, 312.)

F. C. Carter, state auditor of Oklahoma, certified to the correctness of a copy of the consolidated general balance sheet of the Oklahoma Natural Gas Company, as compared with the original filed by said company with the Oklahoma State Board of Equalization for the purpose of taxation.

He also certified to the annual return made to the State Auditor of Oklahoma as secretary of the State Equalization

Board by appellant on April 21, 1921, for the purpose of taxation (Tr. 263).

W. E. GRIMES.

(Tr. 236-256.)

W. E. Grimes made an affidavit on January 25, 1922, which was filed in said cause, and which is in substance as follows:

I am auditor for the Corporation Commission, and have examined the transcript of the testimony and exhibits introduced in evidence before the Commission upon appellant's application for an increase in its rates, which resulted in order No. 1886.

J. E. Dalious, witness for appellant, testified that the total amount of gas purchased by appellant during the year 1920 was 20,764,723 M cubic feet, and that the grand total of the gas sold by said company during said year was 20,030,786 M cubic feet; that in operating its compressor stations appellant used about three million cubic feet of gas per day; and that that gas so used goes in as a part of the leakage; that the gas which appellant itself produced cost it about 22 to 23 cents per M to produce. However, there was a very serious shortage the previous winter, and it was stated that the thing for appellant to do was to drill, drill, drill, and it did so.

The said Dalious further testified that appellant's production and transmission property had a general operating expense of \$267,008.22, and the production expense was \$1,247,433.05, and an expense for gas purchased of \$1,560,679.91.

It is shown by the record that appellant pays ten cents per thousand for the gas which it purchases, as distinguished from that which it produces.

Mr. Sharp testified that the gas produced by appellant itself cost it fifteen cents per M cubic feet to produce; that the company purchased the gas on a basis of two pounds pressure, that it sells 75 to 80 per cent of it on 8-ounce pressure, but that on peak load days the pressure goes down to less than one ounce. He testified that appellant spent approximately \$855,000 during the last year in drilling operations, of which \$350,000 was spent in the Osage; appellant drilled

and purchased between sixty and seventy gas wells; and that the company had drilled about thirty dry holes.

The said R. C. Sharp testified in 1917 that at the time of the merger of the properties of the Osage and Oklahoma with that of the Oklahoma Natural Gas Company, it had drilled 21 dry holes on the Osage lease, and had lost a lot of money on it.

The witness J. E. Dalious testified that appellant charged the drilling expense after the job was completed; that the expense of drilling wells and of wells purchased during 1920 amounted to \$525,654.34.

J. M. Gayle, one of appellant's witnesses before the Commission, testified that \$16,190,382.40 represented the actual out-of-pocket cost of appellant's property, of which \$221,322.61 was in the gasoline division, and \$249,906.22 was in the oil division; that that included expenditures for drilling wells, and that he did not know how many of them were producing and how many of them were dry. That the production division of the property amounted to \$6,948,431.21; that that included all the material that went into the wells, and the gathering lines running from the wells to the main lines, and the casing in the wells. He testified that the transmission property came to \$6,855,339.33, and the distribution lines to \$1,463,324.78.

Mr. Sharp testified in appellant's behalf that appellant owned somewhere between 200 and 250 thousand acres of leases, the main part of which was in the Osage Nation; and that the company purchased 80 per cent. of its gas.

The witness Sharp further testified that in 1917, when appellant increased its capital stock from \$4,000,000 to \$10,000,000, it issued \$1,356,000 of stock for cash; \$2,000,000 of stock for the property of the Osage and Oklahoma Company; \$2,000,000 of stock for the property of the Caney River Gas Company; \$100,000 of stock for the property of the Enid Natural Gas Company; \$250,000 for the property of the Peoples Fuel Supply Company, and \$300,000 for the property of the Oklahoma Fuel Supply Company; those being companies that the Oklahoma Natural took over at that time. The total amount of cash paid in to the company when the capital was increased from four to ten million dollars was \$1,356,000, the same being from new stock sold to the stockholders at par; that the appellant's present authorized capital

is \$15,000,000, of which \$14,300,000 has been issued, the capital being increased from ten to fifteen million dollars in 1919.

Mr. Ritts, appellant's secretary and treasurer, testified that in the merger of the other companies with the Oklahoma Natural, the latter took over the properties of the other companies and paid for the same with stock in the Oklahoma Natural; a committee of three experts valuing the property of each of the companies and fixing a fair price at which it should be taken. Two of the experts were H. P. Reeser and John E. Pew.

In an order made by the Commission on March 31, 1917, upon an application of the Osage and Oklahoma Company and the Galbreath Gas Company for an increase in rates, the Commission said:

"Attorney for the Osage and Oklahoma Company in his brief adds together the original cost, \$522,639.68, and the replacement cost, \$840,822.16. This gives \$1,363,481.84. He then takes one-half of this sum, or \$681,740. It is shown by the record that Tulsa consumed more than 99 per cent. of the gas sold by the company. He therefore apportions to Tulsa 99 per cent. of \$681,730, or \$674,913. He estimates that the property has depreciated 10 per cent. a year for five years, and by a deduction of this depreciation he fixes the present value of the physical property at \$398,530. This of course is only an estimate."

Appellant's witness Sharp testified that the only cash sales of stock ever made by the Oklahoma Natural were \$3,000,000 of stock in 1919, \$1,356,000 in 1917, and the cash originally put into the company; \$2,000,000 had been put in in cash at the time of appellant's original organization; that appellant now has issued \$14,300,000 of stock, of which \$1,300,000 was issued as a stock dividend; that the company was unable to get the money from the bank; that it was necessary for it to raise money to build new lines; that it increased its issued capital stock from \$10,000,000 to \$14,300,000, selling \$3,000,000 of the stock at par, thus making a total of \$13,000,000, and issuing a 10 per cent. stock dividend on that; and that it was necessary to do so in order to sell the stock.

The witness Sharp further testified that the Morrison line, in which appellant had an investment of \$826,000, was now carrying only about two million cubic feet per day.

H. E. Musson, one of appellant's witnesses, testified that if the cost of building new lines to new fields should be treated as expense, then neither a return nor depreciation should be allowed thereon.

Samuel S. Wyer, one of appellant's witnesses, testified that the average line loss by leakage with natural gas companies was about 35 per cent. between the wells in the field and the ultimate consumer's meter. I have been informed that the loss on appellant's system between the wells and the consumer's meter is in round numbers 26 per cent. The loss in the local Tulsa plant is much larger than it should be. I am unable to give the exact figures because in estimating the loss, there was included a stretch of main line out in the Osage field. The loss in miles of three-inch pipe per annum is 4,373 M cubic feet. By way of comparison, good manufactured gas practice would require that the loss be kept down to 100 M per mile of three-inch line. Therefore the loss in this local distributing plant, which however includes eight miles of field transmission line, is 43 times larger than would be right for good manufactured gas practice. This loss is 22 times larger than the average of over 100 towns in Ohio supplied by the Ohio Fuel Supply Company. This is a factor that you must cope with in your future rate situation. That loss must be curtailed. You are wasting something for which in the very near future the public is going to pay a very much higher price for a substitute. On the basis of what it would cost the public to replace the natural gas now wasted in the Tulsa plant annually, the loss would amount to \$2,500,000. This loss can be reduced by proper maintenance of the distributing plant. The Ohio Fuel Supply Company had a loss of 43 per cent. Within four years it was cut down to 13 per cent. There is no such thing as a bottle tight plant. The consumer must pay for curtailing the leakage; there is nobody else to pay for it. This leakage may be due to a great many things; first, slow meters, which do not register all the gas which the consumer burns. Second, you have a certain amount of electrolysis in this town. You are operating a single trolley electric railway with grounded return. Those currents leak off the rails, get on the underground gas pipes, and where they leave the pipes to go back into the soil they cause a corrosion. That will account for part of the leakage.

Then you undoubtedly have a large amount of pipe where the joints are leaking. With your fine paved streets, the correction of this leakage is a very serious matter. It would be necessary to cut into these paved streets and get to these pipes, and put on collar leak-proof joints, before you can get the leakage down where it should be. It may be that the cost of cutting through the fine pavements you have will be so high as not to make it worth while to get the leakage down to as low a point as it could be gotten. The leaking joints are very hard to discover, much harder than in the case of manufactured gas plants, owing to the fact that manufactured gas has a disagreeable odor, and natural gas has no odor.

W. E. GRIMES, on January 25, 1922, made another affidavit which was filed in this cause which was in substance as follows (Tr. 256-260):

I have read order No. 1255 made by the Oklahoma Commission on March 31, 1917, upon the application of the Osage and Oklahoma Company and the Galbreath Gas Company for increased rates in Tulsa, which order is reported in the 1917 report of the Corporation Commission at page 438. The valuation fixed by the Commission for rate making purposes in that case was \$693,959.07, which included \$100,000 allowance for the construction of a belt line for the purpose of bettering the service in Tulsa. The Osage and Oklahoma Company is one of the companies which the Oklahoma Natural took over in 1917. In 1918, Mr. Bartlett testified before the Commission in behalf of appellant that none of appellant's original stock was sold for cash, its entire capital of \$4,000,000 being issued for property; that its bond issues were sold for cash at par; that the property purchased with appellant's stock became a part of its assets, and that the money derived from the sale of its bonds was used in building pipe lines and compressors.

In the Commission's order No. 1255, upon the application of the Osage and Oklahoma Company and the Galbreath Company for increased rates in Tulsa, the Commission fixed the value of the property for rate making purposes at \$693,959.07. This was the same company whose property was merged with the Oklahoma Natural, and for which \$2,000,000 of the stock of that company was issued.

W. E. GRIMES made another affidavit on February 27,

1922, which was filed in this cause, and which was in substance as follows (Tr. 266-8):

In response to the request of the Corporation Commission made on February 20, 1922, appellant has furnished the Commission with a statement of its receipts from the sale of gas during the month of January, 1922, which amounted to \$631,679.25. Statements of appellant's revenues and expenses for the months of December, 1921, and January, 1922, have not been submitted, but the Commission has such statement for November, 1921. The operating expenses and taxes for November amounted to \$268,579.20. Appellant's total sales of gas in January, 1922, was 2,099,403 M cubic feet. Allowing a 10 per cent. loss in transportation, and an additional 10 per cent. loss in the distribution lines, it would be necessary for appellant to purchase or produce 2,417,717 M cubic feet. This at ten cents per thousand, the prevailing market price for gas at the well, would amount to \$241,771.70. This added to the operating expenses and taxes, makes a total expense of \$510,350.90, which deducted from the gas sales in January, 1922, would leave a net profit of \$121,328.35 in that month, at the rates authorized by the Commission. The gas sales during the month of January, 1922, computed at the rates which appellant charged during that month under the restraining order granted by the Federal court amounted to \$871,093.28. Deducting from that the operating expenses and cost of gas as aforesaid, to-wit, \$510,350.90, would leave a net profit of \$360,742.38.

Allowing 10 per cent. leakage loss in the transmission lines and an additional 10 per cent. in the distribution lines, appellant's total loss of gas in January, 1922, would be 318,334 M cubic feet. This at ten cents per thousand cubic feet at the well would amount to \$31,833.40, which would be nearly \$400,000 a year. Included in the above computation for the month of November, 1921, is \$42,242.55 of taxes, which is supposed to be one-twelfth of the total taxes appellant will have to pay during the entire year. At that rate its taxes for the year would amount to more than half a million dollars, which affiant believes is much more than what appellant will really have to pay. In its annual report to the Commission for the year ending December 31, 1920, there was entered a total of only \$233,357.40 general taxes, \$2,115.58 gross production tax on gas, \$12,192.48 capital stock tax, and \$121,000 Federal

income tax. Affiant is informed and believes that appellant's actual investment in facilities necessary in producing, purchasing, transporting and distributing gas to its customers is much less than ten million dollars, and that a careful audit of appellant's books, records and accounts would so show. In appellant's annual report to the Commission for the year ending December 31, 1920, there was entered an item of \$3,521,159.74 for mineral, gas and oil rights and leaseholds, and of that amount only \$73,520.78 represented real estate owned in fee. It appeared that appellant's automobiles amounted to \$102,452.46. On page 16 of said report appeared a debit item of \$981,145.66 for depreciation and depletion. The income account was thus made to reflect a deficit of \$894,574.03, notwithstanding the payment to the Federal government of an income tax to the amount of \$121,000.

CHARLES L. DAUGHERTY.

(Tr. 264.)

Charles L. Daugherty made an affidavit on January 25, 1922, which was filed in this case, and which was in substance as follows:

I am an accountant for the Corporation Commission, and I assisted in the valuation of appellant's properties under the supervision of M. E. Durham, at that time valuation engineer for the Commission. I assisted in listing, inventorying and appraising appellant's production property, including the oil and gas leases held at that time by that company; the leases which were originally taken and held by said company were appraised and valued at the face value as recited by the terms thereof. The leases which were assigned to and taken over by appellant at the time of the merger or consolidation were listed and appraised at the value represented in the respective assignments from the assignee to appellant.

J. W. DUVALL.

(Tr. 265.)

J. W. Duvall made an affidavit in this case on February 7, 1922, which was filed, and which is in substance as follows:

I am gas engineer of the Corporation Commission, and am familiar with the findings and records of the Commission relating to appellant's operations as a public utility. According to appellant's reports to the Commission the amount of

gas sold from its transmission system for the year 1920, together with the estimated loss in transmission during the same period is as follows:

Gas sold during the year 1920-----	20,030,786 M ft.
Loss during year 1920 estimated 20% of	
of input into pipe line-----	5,007,696 M ft.

Input into pipe line during the year 1920-----	25,038,482 M ft.
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The miles of main in appellant's transmission system on October 31, 1919, were 995 miles on a three-inch equivalent basis. The loss per year per mile on three-inch equivalent main would be approximately 5,000 M feet, which is an enormous loss for any kind of transmission system, and in my opinion a loss of one-tenth of that amount would be reasonable.

C. S. THOMPSON.

(Tr. 260-262.)

C. S. Thompson made an affidavit in this cause on January 26, 1922, which was filed and which is in substance as follows:

I am a consulting engineer, residing at Shawnee, Oklahoma. It appears that appellant has been making a practice of carrying as a part of its regular operating expense certain charges or accounts that seem to have been placed there erroneously, such as "changes in construction," "repairs to wells or leases," "repairs to lines," "repairs to buildings," "drilling wells," "surrendered leases," and "abandoned wells and lines," for which items there appear charges from June 30, 1909, to June 30, 1920, aggregating \$1,844,352.93, which affiant believes should be charged to the depreciation reserve fund, or be considered as amortizing a part of the capital account.

There also appear charges for interest paid on borrowed capital, which is not justly chargeable to expense. These charges aggregate \$857,558.08. Appellant has without any detailed explanation arbitrarily written off in its profit and loss account large sums of money which are charged to operation, but which properly should be amortized over a reasonable period of years and which aggregate \$836,857.37.

Appellant has from time to time paid dividends on its

stock, and charged the same as an operating expense, and it has issued a stock dividend of \$1,300,000.

On October 1, 1917, appellant effected a merger of the Caney River Gas Company, the Enid Natural Gas Company, the Peoples Fuel Supply Company, the Oklahoma Fuel Supply Company, the Osage and Oklahoma Company, and the Galbreath Gas Company, for which it issued new stock in the sum of \$4,642,000. A study of their former reports show that these companies from a physical standpoint were not of this value, but that this value was arbitrarily fixed by a committee of eastern natural gas representatives; that through this merger appellant increased its book value of used and useful physical property \$6,998,864.12, which would appear to be in excess of the combined showing of the merged property in the sum of \$2,355,864.12. In appellant's report of June 30, 1919, it again improperly raised the physical value of its property without any showing of the facts \$5,985,984.44, and in 1920 still further raised its physical value, on purported inventories of their engineer and auditor, and the values were based on the highest market that had been known in this decade. The value in 1920 was in the sum of \$20,466,930.38, which represents an increase over the 1917 valuation of \$8,665,026.36. Giving a fair and equitable value amounting to \$10,946,555.90 on its physical properties, appellant's income for 1920 would have been 23 per cent. From appellant's reports to the Commission for the period from June 30, 1909, to June 30, 1920, the average net return on the fair value of appellant's physical property was 20 per cent.

#### **Appellant's Affidavits in Rebuttal.**

**R. C. SHARP.**  
(Tr. 310-348.)

R. C. Sharp made an affidavit in rebuttal on February 21, 1922, which was filed in this cause, and which is in substance as follows:

I am vice president of appellant, and have been active in the management of its affairs since 1917.

As to the averment in defendants' answer that in appellant's ownership and use of gas leases and gas wells it is a private corporation and not a public utility, affiant says that

appellant's gas leases and wells are not only used and useful by it in performing its public service of furnishing natural gas to the public, but also the same are necessary and indispensable. Appellant's pipe lines, compressors and distributing systems would be worthless, both to appellant and to the public, without a supply of natural gas to put through them, and natural gas is the thing with which the public is served, and not pipe lines, compressor stations or distributing lines. Appellant's gas leases and gas wells are as much dedicated to the public service as are the pipe lines and compressors. They are analogous to the generating plant of an artificial gas company or of an electric company. They are treated and held by all courts and Commissions, and have always been treated by the Corporation Commission of Oklahoma, as property of the gas utilities used and useful in its public service. If appellant's gas leases and wells are not dedicated to the public use, then it would have the right to divert its gas to private uses, and refuse to furnish the same to the public, and the public would be without a remedy.

Affiant admits that the leakage in appellant's distributing plants is 20 per cent. of the gas delivered into them, and that the leakage in the transmission lines is 15 per cent. of the gas put through them. Such amount of leakage is not abnormal, and is no more than the average leakage of natural gas companies all over the United States.

The averment in defendants' answer that the Corporation Commission of Oklahoma has never recognized or allowed a leakage in excess of 10 per cent. is not true. On the contrary, said Commission, prior to the making of order No. 1886 herein complained of, had not only regarded a leakage of 20 per cent. in distributing plants as not undue or unreasonable, but had expressly allowed the same. In cause No. 2693, by the Corporation Commission of Oklahoma, order No. 1225, to which the defendants refer in one of their affidavits, the Corporation Commission of Oklahoma said:

"An element of the cost of gas as to which there was some dispute was the shrinkage to be allowed. The testimony of witnesses showed that shrinkage in Oklahoma cities had amounted to anywhere from fifteen to thirty-five per cent. Witness for the city testified that in his observations in Ohio and elsewhere the shrinkage ought not to be more than twelve per cent. The Kansas Commission and the Federal Court

in Kansas allowed from twenty to thirty per cent. (see *Landon v. Lawrence*, P. U. R. 1915E, 763). Paragraph 5 of the syllabus of this case reads as follows:

“ ‘In fixing the amount to be allowed to cover leakage and waste of natural gas through a distributing system, thirty per cent of the gas delivered was allowed in the case of distributing companies marketing annually 10,000 M cubic feet of gas or less. Twenty-five per cent in case of companies marketing annually more than 10,000 M cubic feet, and not exceeding 20,000 M cubic feet, and twenty per cent in case of companies marketing annually more than 20,000 M cubic feet, such percentages being an average annual allowance requiring an annual adjustment.’ ”

The Commission further said:

“The Commission finds that an allowance of twenty per cent should be made for shrinkage in the Tulsa plant.”

And it was not until the Commission made the order herein complained of that it ever provided for a leakage of 10 per cent; and it did so without having given appellant any previous notice of its intention so to do, and without making any provision for an earning for appellant with which to bring its plant to that standard. From 1917 until 1921, appellant paid a dividend of only 8 per cent. per annum out of its gas earnings upon its issued capital stock, which has been less than 8 per cent. per annum upon the value of its property used and useful in furnishing gas to the public. It devoted all the remainder of its earnings, which were comparatively inconsequential, to the upkeep of its property, and the same was not sufficient to enable appellant to bring its property to a standard of leakage less than that theretofore allowed by the Commission.

Another element entering into the question of leakage is the pressure which appellant is required to carry on its lines. Its transmission lines are hundreds of miles in length and to force the gas through the same it is necessary that appellant have and use large compressors and pumps at high pressures, ranging from 250 to 300 pounds per square inch, and the leakage is always proportioned to the pressure.

Furthermore the Commission made an order requiring appellant to maintain a pressure of not less than four ounces in all parts of its distributing systems, and providing that appellant should be allowed to collect only three-fourths of

the amount of its bills when the pressure was only three ounces, only half of the amount of its bills when the pressure was two ounces, only one-fourth the amount of its bills when the pressure was one ounce, and no part of its bills when the pressure was under one ounce; and the Commission has twice made orders requiring appellant to rebate and discount its bills because of low pressure, notwithstanding the evidence in said cases showed without contradiction that appellant was furnishing all the gas it had and could get during said times, and that cooking operations could be successfully carried on with gas at one-fourth of an ounce pressure, and that a pressure of two ounces was adequate and sufficient for all cooking and heating purposes. The pressure at which said Commission has required appellant to furnish gas in its distributing systems has caused the leakage to be much greater than it would otherwise be in said distributing systems, and has caused appellant to carry much higher line pressure in its transmission system, and therefore has caused a much greater leakage in such transmission system.

The rates prescribed in said order No. 1886 do not render appellant a reasonable return, and would be confiscatory, even if there was no leakage whatsoever in its transmission and distribution systems, a condition which no gas plant has ever been able to attain. Eliminating the leakage from consideration, and assuming that appellant was required to obtain that much less gas, and applying the Commission's rates to the business done by appellant during the calendar year 1920, and also during the year ending October 31, 1921, and also during the calendar year 1921, it can easily be seen that the Commission's rates would still be confiscatory, even though there was no leakage.

The following were the circumstances under which the Commission fixed the 48 cent rate and under which it terminated the same: That rate was fixed to enable appellant to raise the price of a portion of the gas it was purchasing in the field from six to ten cents per thousand, and also because of some additional investment it was necessary that appellant make in order to reach that gas. Said rate was made upon the recommendation of the Oklahoma City Gas Investigating Committee, and it was provided in the order that inasmuch as the Commission was about to conduct a general hearing upon appellant's rates, and relative to the installation of a

city gate rate, the said 48 cent rate should be in effect from April 15, 1920, to October 1, 1920, and until the further order of the Commission. When the city gate rate case was instituted, the towns and cities served by appellant asked and obtained numerous continuances, which rendered the Commission unable to decide the case by October 1, 1920. In consideration of those continuances, the towns and cities praying them specifically agreed before the Commission that the 48 cent rate should remain in force until the final determination of the cause. The Commission therefore continued said 48 cent rate in force indefinitely and beyond October 1, 1920. On October 1, 1920, appellant was required to and did increase the price it paid for all gas it purchased in the field to ten cents per thousand, which price it was theretofore paying only to the Creek County Gas Company. On December 20, 1920, the Commission made an order fixing the rates for gas at 58 cents per M for the first 100 M cubic feet, 50 cents per M for the next 400 M cubic feet, and 40 cents per M for all over 500 M cubic feet. In that order the Commission referred to the evidence as to the value of appellant's property, and stated that it stood in the record undisputed. The Commission further said:

"The Commission is not at this time prepared to express an opinion as to the fair reasonable value of the property now used and useful in serving the patrons of the Oklahoma Natural Gas Company, but it is clearly apparent that if the company is not to be deprived of the value of certain of its properties by failing to receive compensation therefor during the time when such property is being used to aid in rendering service, and if future customers are not to be unjustly burdened by payment of return on property no longer of material service to them, then there must be provided a fund sufficient to take care of line extensions, compressor stations, and such other expenditures as are from time to time necessary in maintaining the best possible standard of current service."

Further on in the order the Commission said:

"In its efforts to reach new fields and to secure additional supplies of gas the evidence shows that the company has expended approximately \$1,500,000 annually for the last four years. Evidence shows that a large portion of these expenditures has gone into capital account, although largely

incurred in order to enable the company to continue serving patrons already attached to the system; this by reason of the fact that the receipts of the company were insufficient to cover these expenditures and leave the necessary funds for the payment of dividends upon the investment. The evidence shows that the extensions and additions thus made in an effort to maintain service has added approximately 50 per cent to the company's capital account, making the payment of dividends more difficult and new capital relatively harder to secure. As the supply of gas from existing fields is exhausted rapidly, the company that is unable to make extensions to new fields must inevitably fail to supply gas in any measure approximating the need of its patrons. A reasonable return for the money invested in the property used and useful in supplying the needs of the public cannot be denied if continuation of the service is to be desired, nor can the service be continued except the funds be available to make extensions to new supplies of gas when available, and to provide pump stations to force through the lines low pressure gas that cannot be delivered otherwise. It is clearly apparent from the evidence in this case that the present rates applied to the available supply of gas will not produce sufficient funds to meet the various items of expense referred to above, each of which must be met, if the available supply of gas is not to decline and the service deteriorate to a point where it will be utterly unsatisfactory and wholly inadequate."

The above order provided that the rates therein fixed should be temporary, until the Oklahoma Supreme Court had passed upon the question whether the Commission could lawfully prescribe a city gate rate; and the order provided that said 58 cent rate should be in effect from January 1, 1921, until March 1, 1921, or until otherwise ordered by the Commission.

On January 6, 1920, the Supreme Court of Oklahoma in *Muskogee Gas & Electric Co. v. State*, 186 Pac. 730, held that the rate making power of the Commission was not limited to any particular theory or method, and that the Commission might prescribe a temporary schedule of rates to be effective until it had had time to make an investigation and valuation of the property of a public utility. Nevertheless, in *City of Oklahoma v. Corporation Commission*, 195 Pac. 498, the Supreme Court of Oklahoma granted a writ of prohibition

against the Commission and this appellant, prohibiting them from enforcing the Commission's order of December 20, 1920, and prohibiting the appellant from putting into effect the said rates therein prescribed, on the ground, first, that the Commission had made said rates without a valuation, although it had previously held, and in a subsequent case again held, that the Commission could fix temporary rates without a valuation; second, that appellant bore no relation to the towns and cities in which it did not own the distributing plants, but where it only furnished gas to local distributing companies to be distributed; but instead of holding the said rate to be invalid only as to such towns, it also held it to be invalid as to all of the towns in which appellant did own the distributing plants; and third, that the Commission had no power to prescribe a rate or grant an increase in rates for the purpose of giving appellant an earning for amortizing its pipe lines during the period of time they were in use. The said 58 cent rate having thus been held void, thereafter on June 14, 1921, in *City of Bartlesville v. Corporation Commission*, 199 Pac. 396, the Oklahoma Supreme Court held that the Commission had power to fix temporary rates without a valuation.

After the Oklahoma Supreme Court had held the order of December 20, 1920, prescribing the 58 cent rate, to be void, the Commission permitted the 48 cent rate to continue until April 1, 1921, and then, without notice to appellant, it directed from the bench that the 48 cent rate should cease and the forty cent rate, which was in effect prior to April 1, 1920, should again become effective. Appellant protested against the abrogation of the 48 cent rate, and the putting into effect of said forty cent rate, but the Commission overruled its protest. The 48 cent rate did not lapse by virtue of its terms, but by virtue of the Commission's order made within a few months after it found that this appellant was entitled to a 58 cent rate, and three months before the Commission made order No. 1886 herein complained of, in which latter the Commission found that the city gate rate for each and every thousand cubic feet of gas which appellant delivered into each and every distributing system, whether for domestic or industrial purposes, based upon the allowance of only 8 per cent. for return and 8 per cent. for depreciation and amortization, upon the depreciated original cost of appellant's property, ought to be 35.2 cents per M, notwithstanding which, said

order fixed said city gate rate at only 25 cents per M for domestic gas and 20 cents per M for industrial gas.

Noticing the averment in defendants' answer that by June 25, 1921, almost a year after the institution of said rate case, the Commission was unable to separate appellant's purely privately owned property from its property used and useful in the public business, affiant presumes that by "purely privately owned property" defendants refer to appellant's gas leases and gas wells mentioned in an earlier portion of said answer. Touching said matter, the Commission in its said order stated that it was considering and valuing only the property of appellant "used and useful in producing and transporting gas." It further said: "As to the gas which the Oklahoma Natural produces itself, the cost of production, including labor, drilling, casing and gathering lines, has more than doubled since said percentage contracts were entered into." In every rate case which every natural gas company has had before the Commission, its gas wells and gas leases have been considered.

Furthermore, the Commission's engineers and accountants at all times had full access to all of appellant's books, vouchers, and records; and they spent months in appellant's office examining the same prior to and during the hearing of said cause, and reported that they had completed the same and appeared before the Commission and testified in regard to the same. And in said order the Commission expressly purported to pass upon and determine the value of appellant's property used and useful in serving the public.

The statement in defendants' answer that the rates prescribed by the Commission, based upon the data before it, and upon the experience which the Commission had had, were sufficient to produce to appellant an adequate return for amortization, depreciation and interest, upon the city gate principle, is not true. On the contrary, the very least city gate rate which the data before the Commission suggested in any aspect, as the Commission stated in its order, which rate was based upon depreciated original cost, denying appellant the benefit of any appreciation in values, and which was based upon a return of only eight per cent. for interest or dividend and only eight per cent. for amortization and depreciation, was 35.2 cents per M for all the gas, both domestic and industrial, delivered into each distributing system; but

notwithstanding that fact, and the Commission's finding of that fact, it nevertheless fixed the city gate rate at 25 cents per M for domestic gas and 20 cents per M for industrial gas. As to the averment in defendants' answer that the Commission's supplemental order of July 15, 1921, modifying the rates fixed in order No. 1886 as to certain of the smaller towns, were made with appellant's consent, affiant says that in said order No. 1886 the distribution rates in certain of the smaller towns were fixed at 50 and 55 cents per M cubic feet for the first 500 M cubic feet, and 25 cents per M for all gas used in excess of that quantity. There was practically no industrial consumption in said smaller towns except cotton gins in a few of them which operated during the fall months. The Commission represented to appellant that it had received complaints from those small industries to the effect that the amount of industrial gas which they used was so small that it would practically all take the domestic rate, and that therefore the said industries were unable to use the gas, and that they had requested that another break be fixed in the rate schedule in order that they might burn gas for industrial purposes. The Commission also informed appellant that it would be to appellant's advantage to sell industrial gas to those users, and that their complaint was well taken, and that a hearing would be had thereon unless appellant would permit the Commission to modify said order as to those small towns without a hearing. Appellant recognized that the small industrial users could not burn gas at 50 and 55 cents, and it therefore offered no objection to the Commission's order permitting the industrial users to pay the 50 and 55 cent rate for the first 100 M cubic feet, and 40 cents per M for the next 400 M cubic feet, and 25 cents per M for all over. Appellant is not complaining of said industrial rates at this time. The source of its complaint then and now was and is the city gate rate and the domestic rates which were fixed in each of said towns and cities.

As to appellant's delay in perfecting its appeal from the Commission to the Supreme Court of Oklahoma, the facts are that when the Commission made its said order appellant stated to its attorneys that the said rates were so grossly inadequate that appellant could not live under them, and directed that an appeal be taken therefrom. The Oklahoma Gas & Electric Company, to which appellant furnished gas

for distribution in Muskogee, Enid, Oklahoma City and El Reno, prayed an appeal from the Commission's order to the Oklahoma Supreme Court, because the order abrogated the purported divisional contracts and fixed a city gate rate; and it requested that the evidence in said cause be transcribed and certified by the Commission and filed in the Supreme Court; and appellant's attorneys stated to affiant that upon the completion and certification of said transcript, appellant could take a cross appeal thereon without having a separate transcript made. The Commission's reporters were then transcribing said evidence for said appeal of said Oklahoma Gas & Electric Company. About the last of September, 1921, affiant gave appellant's attorneys directions to appeal from said order, and was informed that a cross appeal would be taken as soon as the evidence was transcribed and certified for said Oklahoma Gas & Electric Company. Shortly after the said evidence was so transcribed, the Oklahoma Gas & Electric Company dismissed its appeal, and thereupon appellant immediately filed, not a cross appeal, but its own appeal in said cause, and it paid for and used the transcript which had been prepared by the Commission for the Oklahoma Gas & Electric Company.

Referring to that portion of defendant's answer wherein it is stated that the rates prescribed in said Order 1886 were based upon the demand for gas in preceding years, and that the Commission is willing to entertain another application for a readjustment of the rates if appellant has not been able to sell as much gas as in preceding years, affiant states that the Commission's order itself showed that the rates prescribed were and are confiscatory even under the Commission's own finding and even based upon the amount of gas which the Commission found had been sold during the previous years. It was in evidence before the Commission that appellant had never earned a reasonable return during any year since the Commission had been fixing its rates, and the Commission found that appellant was required each year to put more into the property in order to furnish a constantly diminishing supply of gas than it was getting out. It was proved before the Commission, and the Commission expressly found, that the quantity of gas appellant was able to sell was diminishing each year. The Commission expressly found that in 1917 appellant sold 29 billion cubic feet of gas, and

that there had been a steady reduction in the amount it was able to sell each year, so that in the year 1920 it had sold only 20 billion cubic feet. The Commission knew that during the years 1918, 1919, and the first half of 1920, the price of oil and coal, competitive fuels, was the highest ever known in Oklahoma, and that said prices were abnormal, and themselves caused a larger demand for gas than there would otherwise have been. The Commission further knew when it made said order that said abnormal prices for coal and oil had declined, and that from October 1, 1920, to the time the Commission made said order appellant's industrial consumption had been practically eliminated; so that it was shown to said Commission that the amount of gas which appellant could sell was diminishing each year, and that appellant could not hope to sell during the succeeding year the amount of gas it had sold during the year preceding.

Moreover, before this case was filed in the United States District Court, two members of the Commission stated to this affiant that if appellant should file another application for an increase in rates, each town and city affected would insist upon a hearing in that particular town and city, and that the Commission could not hear such an application and make an order in it in less than ten months; and said statement by said commissioners was and is true in fact.

Furthermore it was in evidence before said Commission and it knew when it made Order 1886 that appellant's sales of gas had diminished during the latter part of 1920 and the entire period of 1921 until the time the Commission made said order; and affiant informed the Commission before it made said order that during the year 1921 appellant could not and would not sell in excess of 15 billion cubic feet of gas for all purposes, and the fact is that during the calendar year of 1921 appellant's sales of gas for all purposes were 14,044,728 M cubic feet.

It was in evidence before said Commission, and the latter knew when it made Order 1886 that appellant's industrial sales of gas had been practically eliminated from the month of October, 1920, to June 25th, 1921, the date of said order.

In said Order 1886 the Commission found the value of appellant's production and transmission properties used and useful in its public service to be \$16,496,150.46, and it found the total value of all of appellant's distributing properties

to be \$2,026,600.94, making a total value of appellant's property used and useful in its public service of \$18,522,751.40. The values found by said Commission were and are less than the actual value of appellant's said property. In defendant's answer it is asserted that a rate of 8 per cent. for interest or dividends and an additional 8 per cent. for amortization and depreciation is adequate for the production and transmission property. The said percentages, because of the character and nature of the business, its hazards, uncertainties and risks, the instability and short life of the business, are inadequate and unreasonable; but applying the same to the values found by the Commission, we should have the following results:

Eight per cent. for return or dividend and 8 per cent. for depreciation and amortization upon the value of the production and transmission property as found by the Commission would give a net return of \$2,639,384.07; and 8 per cent. for interest or dividend and 5 per cent. for depreciation and amortization upon the values found by the Commission of the distributing property would give a net return of \$263,458.12; making a total net return to which appellant was entitled during the year 1920, under the Commission's own finding of value and upon its own statement as to what the returns should be, of \$2,902,842.19. The amount which appellant actually earned during the year 1920 over and above its necessary operating expenses was \$1,460,748.02; and that fact was in evidence before the Commission at the time it made said Order 1886; and during the year 1920 appellant was required to spend enormous sums in building new lines to new fields in order to have an adequacy of supply; so that it is apparent that the Commission did not fix rates that were adequate and compensatory even upon the basis of the data before it and upon the basis of appellant's previous experience.

Moreover, appellant's net receipts during the year 1920 of \$1,460,748.02 were made under conditions much more favorable than those existing when the Commission made Order 1886, in that during most of the year 1920 appellant was paying only six cents per thousand for the gas which it purchased, and from April 15, 1920, and during the remainder of the year, appellant was receiving, in all the towns and cities

in which it owned the distributing plants, forty-eight cents per thousand for the gas.

Three-fourths of the gas which appellant itself distributes is distributed in the city of Tulsa, in which the Commission fixed in said order a 42 cent rate; so that during most of the year 1920 appellant was receiving 48 cents per thousand for all the domestic gas which it distributed as against 42 cents per thousand fixed by the Commission for gas in Tulsa under Order 1886, which was three-fourths of the gas which appellant itself distributed. Also, under the divisional contracts existing between appellant and the independent distributing companies, appellant received two-thirds of the collections made by said independent distributing companies, that is to say, during most of the year 1920, appellant received two-thirds of forty-eight cents, or thirty-two cents per thousand, for the gas furnished said local distributing companies, leaving out of consideration leakage, as against twenty-five cents per thousand fixed by said Commission in order 1886. In short during most of the year 1920, appellant was paying less for gas than during the year 1921, and was receiving more for it; and yet its net return during 1920 was only half what the Commission in its answer and order stated appellant should earn.

Touching that portion of defendants' answer in which it is stated that large elements of appellant's property have become useless for the public service by reason of exhaustion of gas fields to which appellant had built its lines, affiant says that the inventory and appraisal of its property by H. E. Musson comprised only property used and useful in rendering appellant's public service, and the same did not include any property which had become useless; and the said Musson so testified before said Commission. The inventory and appraisal made by the Commission's engineer, M. E. Durham, as the latter testified before said Commission, included only property used and useful by appellant in rendering its public service; and said Durham testified that if he had included all of the proper labor items upon the fifty-five miles of appellant's 12-inch and 16-inch pipe line from Cement to the Walters field, and had placed in his inventory and appraisal the proper provisions for intangibles and overheads, there would have been very slight, if any, difference between his appraisal and that of Mr. Musson.

Moreover, appellant's books and records have at all times been open to the inspection of said Commission and the Commission had and kept a corps of engineers, auditors and accountants who might examine both the properties themselves and appellant's books and records for the purpose of determining what was used and useful in rendering appellant's public service.

Appellant filed its application before said Commission on August 5, 1920; but the Commission knew long prior to that date that said application would be filed, and it put its engineers, auditors and accountants to inventorying and appraising appellant's property many months before that date, and the hearing on said cause ran from August 5, 1920, to June 25, 1921.

Moreover, the exhaustion of a gas field does not always render useless the pipe lines in said field. For example, appellant formerly obtained natural gas from what was known as the Glenn Pool Field. Its main pipe line running from Tulsa to Oklahoma City passed through that field. Said field has been exhausted for some years, but said pipe line is still used and useful in transporting gas between Tulsa and Oklahoma City. The gathering lines in the field were taken up and used in other gas fields. As another example, appellant built a pipe line from Oklahoma City southwest to the Cement Gas Field, 57 miles from Oklahoma City. That field has become exhausted, but the said pipe line did not thereby become worthless. On the contrary appellant extended the line still further southwest into what is known as the Walters and Dunean fields, a distance of 50 miles south of Cement.

Furthermore appellant has many transmission lines and gathering lines running from its main lines into gas fields which originally produced large quantities of gas, and in which the production has fallen off to where the same are inadequate to supply that proportion of appellant's needs for gas which they formerly supplied; yet the amount of production in said fields is still too large to justify appellant in removing its lines. For example, appellant built a pipe line into the Morrison Field, at a cost of \$825,000.00. There was at that time an open flow volume of 90 million cubic feet of gas per day in that field. At this time the open flow volume of said field is only 13 million cubic feet per day. This reduction in the volume obtainable in the Morrison field necessi-

tated the building of new lines to other fields; but to render efficient service appellant cannot forego the 13 million cubic feet of gas still obtainable in the Morrison field, and therefore cannot remove its pipe lines in said field. The same condition is true in the Cushing field and in many other fields. Should appellant abandon those fields that are now making small quantities of gas, its supply of gas would be wholly and totally inadequate.

In addition to that, when the whole or a part of a pipe line is removed from a gas field, as appellant has done in numerous cases, that pipe is relaid in other fields, and in relaying the pipe appellant is required to obtain new rights of way, to spend large sums of money in taking up the pipe, in transporting it to the new fields, and in digging the new ditches and laying pipe in said new fields. The necessity for using all the gas available has prevented appellant from laying lines to new fields merely by the removal of old lines, and has necessitated the constant purchase and laying of lines out of new pipe altogether.

In all cases where appellant's own leases have been exhausted they have been charged off, and in all cases where a pipe line has been removed it has been charged off, and when relaid the investment was put back on the books. These facts have been shown the Commission in hearing after hearing, and were and are well known to it.

It is not true that many millions of dollars paid for large acreage of leases in wildcat and undeveloped territory are included in the valuation of appellant's property. On the contrary, Durham's inventory and appraisal contains only \$451,415.42 as the value of unoperated leases; and Musson's inventory and appraisal on the original cost basis allows only \$437,820.64 for unoperated leases.

Appellant was organized on October 9, 1906, with a capital stock of three million dollars. On March 11, 1907, the capital stock was increased to four million dollars. Affiant was not connected with appellant at that time, but he has been informed and believes that at the time the capital stock was increased to four million dollars, two million dollars in cash was paid into appellant's treasury, and that producing gas leases having an open flow volume in excess of one billion cubic feet, and worth more than two million dollars, were assigned to appellant.

On July 6, 1917, appellant merged with several other gas companies hereinafter named, and the capital stock was increased to ten million dollars. On May 31, 1919, the capital stock was increased to \$14,300,000.00. The constituent companies, the merger of which in 1917, made what is now the Oklahoma Natural Gas Company, were as follows:

Oklahoma Natural Gas Company, organized October 9, 1906, capital stock \$4,000,000.00.

Caney River Gas Company, organized May 24, 1906, capital stock \$1,000,000.00. This company's property was appraised when it merged with appellant. It had over 100 miles of 8-inch pipe line, costing \$904,136.46. It owned four compressor stations, one located at Bixby, one at Haskell, one at Braden, and one at Wallace Station, which compressor stations with their equipment had cost over \$200,000.00. It owned the natural gas distributing plants at Coweta and Haskell. It owned four warehouses with the stock therein. It furnished gas for distribution in the city of Muskogee. It had numerous very valuable producing gas leases. Its property, including accounts receivable, which appellant acquired in said merger, were appraised by disinterested persons at said time at the sum of \$2,917,547.99.

The Osage & Oklahoma Company, organized on March 16, 1905, with a capital stock of \$1,500,000.00, also went into said merger. That company owned the distributing systems in Tulsa, Dawson, Turley and Red Fork. It owned pipe lines of the following lengths and sizes: 17 miles of 12-inch; 114 miles of 8-inch; 9 miles of 6 $\frac{5}{8}$ -inch; 50 miles of 6-inch; 31 miles of 4-inch; 20 miles of 3-inch, and 17 miles of 2-inch. It owned warehouses and the stock therein. It owned numerous very valuable gas leases, including 107,000 acres in one block in the Osage Nation. Its property was appraised by two disinterested, competent gas men, neither of whom were interested in the company, at the sum of \$2,318,362.86. It had no indebtedness whatsoever, and had accounts receivable amounting to \$202,252.31.

The Oklahoma Fuel Supply Company, organized February 15, 1910, with a capital stock of \$250,000.00, also went into said merger. It had no indebtedness, and its property was appraised at the sum of \$534,506.58. It owned the distributing plants in Claremore, Ramona, Inola, Porter, Wagoner, and numerous other towns.

United Fuel Supply Company, organized June 19, 1911, with a capital stock of \$500,000.00, also went into said merger. On January 19, 1916, this company became what was known as the Enid Natural Gas Company. It owned the main pipe line from the Blackwell field to the city of Enid, and the distributing plants at Nardin, Lamont, Hunter, Pond Creek and Peckham. The property of this company was appraised at \$413,341.20.

The Peoples Fuel Supply Company, organized October 21, 1912, with a capital stock of \$100,000.00, also went into said merger. This company owned pipe lines and producing gas leases which were appraised in the sum of \$254,725.41.

The matter of the making of said merger was laid before the Governor, the Attorney General, and the Corporation Commission of Oklahoma, and the consent of said three departments of the state government was obtained before said merger was made. The properties of all the other constituent companies were acquired by appellant in said merger, and the same was paid for with stock of the Oklahoma Natural Gas Company. The properties of each of said constituent companies were appraised by Mr. John Pew of Pittsburgh, Pa., then president of the Hope Natural Gas Company, the largest natural gas company in the United States, and by Mr. Harry Reeser, of Pittsburgh, Pa., Assistant to the President of the Ohio Fuel Supply Company, and connected with many other gas companies. Neither of these gentlemen owned a dollar of stock either in the Oklahoma Natural Gas Company or in any of the companies which were merged with it. Both of them were competent, practical natural gas men, experienced in the operation of natural gas properties and in the determination of the values of such properties. They were among the best known natural gas men in the United States. They determined the price at which appellant should take over the properties of the other constituent companies.

In taking over the properties above named appellant increased its capital stock to \$10,000,000.00, and of said increase at said time it sold \$1,356,000.00 of stock for cash at par, and the remainder of said increase of stock was paid for by said properties so taken over.

On May 31, 1919, appellant's capital stock was further increased to \$14,300,000.00 in order to get money to pay for new pipe lines which had been and were to be built to new

gas fields; \$3,000,000.00 of said increase was issued and sold for cash at par, making a total capital stock of \$13,000,000.00. Appellant then issued a stock dividend of 10 per cent. amounting to \$1,300,000.00, making the issued capital stock \$14,300,000.00. Appellant was unable to raise the \$3,000,000.00 in any other manner. It undertook to sell bonds for the purpose of raising the necessary new money, but it was wholly unable to do so.

As to the dividends paid by appellant and the constituent companies, the following are the facts:

From October 9, 1906, to December, 1910, a period of four years, the Oklahoma Natural Gas Company proper paid no dividends of any kind or character, all its earnings being put back into the property. In December, 1910, the Oklahoma Natural Gas Company paid a dividend of 1 per cent. on its capital stock of \$4,000,000.00. In 1911, it paid a dividend of 3 per cent.; in 1912, 4 per cent.; and in each of the years 1913, 1914, 1915 and 1916 it paid a dividend of 5 per cent. on its capital stock of \$4,000,000.00.

Caney River Gas Company paid no dividend of any kind or character from its organization on May 24, 1906, until 1912, a period of 6 years, and all of the earnings of the company were put back into the property. In 1912 it paid a dividend of 6 per cent.; in 1913, 8 per cent.; in 1914, 8 per cent.; in 1915, 9 per cent., and in 1916, 10 per cent.

The Osage & Oklahoma Company paid no dividend of any kind or character from the date of its organization on March 16, 1905, until the year 1911, a period of 6 years; and all the earnings of the company were put back into the property. In 1911 it paid a dividend of one-half of one per cent.; in 1912, 3 per cent.; in 1913, 4 per cent.; in 1914, 5 per cent.; in 1915, 7½ per cent., and in 1916, 9 per cent.

The Oklahoma Fuel Supply Company, organized on February 15, 1910, paid during the year 1910 a dividend of 1½ per cent.; in 1911 it paid 9 per cent.; in 1912, 8 per cent.; in 1913, 7½ per cent.; in 1914, 8 per cent.; in 1915, 8 per cent., and in 1916, 6 per cent.

The United Fuel Supply Company, organized in June, 1911, paid no dividend during that year. In 1912 it paid a dividend of 1½ per cent.; in 1913, 8 per cent.; in 1914, 8 per cent.; 1915, 4 per cent. It was converted into what was

known as the Enid Natural Gas Company in January, 1916, and during that year it paid a dividend of 6 per cent.

The Peoples Fuel Supply Company paid no dividend from its organization in 1912 until the year 1917, a period of five years; in 1917, before the merger, it paid a dividend of 30 per cent., which would amount to 6 per cent. per annum during the time.

Since the merger in 1917, and until 1921, the Oklahoma Natural Gas Company has paid a dividend upon its natural gas business of only 8 per cent. upon its issued capital stock. In 1919 it paid a dividend of 2 per cent. from its oil and gasoline business, in 1920 the same, and in January, 1921, it paid a dividend of one-half of one per cent from its oil and gasoline business. In 1921 it discontinued the payment of dividends altogether.

The total dividends which appellant and all the constituent companies have paid from their organizations to the present time upon the whole business, including the gas business, the oil business and the gasoline business, have been \$6,933,416.70. Of this \$579,000.00 was dividends paid in 1919, 1920 and 1921 from the oil and gasoline earnings, leaving dividends paid on the property devoted to public use of only \$6,354,416.70, or only \$800,075.69 more than the new money which appellant has been required to invest in the last four years in order to secure and furnish an adequate supply of gas to its consumers.

Of the \$6,933,416.70 paid as dividends by all the constituent companies from the date of their organizations to the present time, including the earnings both from natural gas and from oil and gasoline, \$4,740,916.70 thereof has been paid since and including the year 1917, leaving only the sum of \$2,192,500.00 paid as dividends from the organization of the companies in 1905 and 1906 up to the year 1917, or a period of 10 years, as against the \$4,740,916.70 paid as dividends since and including the year 1917 on appellant's entire business, both natural gas, oil and gasoline. During the same period of time appellant has been required to put \$5,554,341.01 of new money into its business, not for the purpose of increasing the amount of its business, but merely for the purpose of being able to continue doing business at all, the same being \$813,424.35 more than the dividends received during that time. Appellant's business being unstable, and surely

and certainly coming to an end, appellant's stockholders and directors naturally inquire when and how, under the rates allowed them, they may expect to get their capital back.

Affiant observes that in appellant's bill and in one of the affidavits previously made by affiant it is stated that appellant's net earnings for the year 1917, after deducting its usual and ordinary expenses, were only \$78,767.58. Affiant has ascertained from a further examination of the records that this is an error, and that the same represented appellant's earnings for one portion of the year only, the earnings of neither of the constituent companies which were merged with appellant in 1917 being put in. Appellant's total net earnings for the year 1917 were \$720,116.70; and its total net earnings during the years 1917, 1918, 1919 and 1920 were \$4,750,197.57.

Appellant's net earnings since 1917, over and above the dividends paid, have been negligible, and have been used at all times to keep appellant's property in as good repair as it was possible to do. Appellant's sole source of money with which to build new lines to new fields has been its stockholders, it being unable to issue long time bonds, and it being able to borrow money only by the personal endorsement and guarantee of its directors and stockholders; and it has been necessary, in order for appellant to get the new money from the stockholders, that it pay dividends.

Appellant's oil and gasoline properties and its oil and gasoline business have been kept separate from its natural gas business and properties since and including the year 1919; none of the expenses of the oil and gasoline properties or operations having been charged to the natural gas properties or operations. Prior to 1919 the expenses and operations were not kept separate, but the public service part of appellant's business had the benefit of all the earnings of the oil and gasoline business, and the dividends paid prior to 1919 constituted the joint earnings from both the public service business and the oil and gasoline business. In every rate hearing which appellant has had before the Commission, including the hearing resulting in order 1886, both appellant's natural gas business and its oil and gasoline business have been gone into thoroughly before the Commission, and evidence was submitted showing the investment in the public service property and in the oil and gasoline property, and all data, facts and figures relating thereto have always been

fully and completely disclosed to said Commission. In addition to that, appellant's books and records have always been open to the inspection of the Commission, its auditors, accountants and engineers.

Appellant has never charged the expense of any well drilled for oil, whether the same was a producing well or a dry hole, to the public service business. Its oil business, since and including the year 1919, has been kept in a separate department, and has been kept as separate, both in investment and expense, as if it were owned and operated by a different corporation altogether. Nevertheless in all these rate hearings the amount of appellant's investment in oil and gasoline property, and its expenses and income from said business, have always been gone into by the Commission and have been fully shown and disclosed.

Appellant has drilled for oil only in territory thought to be productive of oil, and when it so drilled it charged the expense thereof to the oil department. It has drilled for gas only in territory believed to be productive of gas, and when it has so drilled it has charged the expense thereof to the gas department. But if, in drilling for oil, appellant finds gas which is available to its pipe lines, then the well is turned to the gas department and that department is charged with the cost of the well. On the other hand, if in drilling for gas appellant finds oil, then the well is turned to the oil department, and the expense thereof is charged to that department. In the hearing of this case before the commission, appellant's investment in oil and gasoline properties, its expense, in that department, and the net earnings therein were all shown, and appellant offered in said hearing to treat the income from said oil and gasoline properties as though it were income from the public service part of its business, provided its investments in said property and its expenses in that department were also so treated.

The averment in defendant's answer that appellant has prospected for oil on its lease in the Osage Nation is not true. The facts are that that lease was executed by the Osage Tribe of Indians and the Secretary of the Interior, and does not convey to appellant the oil rights at all, but only the gas rights. Other people have leases upon the same acreage executed by the Osage Nation and the Secretary of the Interior covering the oil rights, and a specific provision both of

appellant's lease and of the oil leases is that if appellant in drilling for gas should find oil, then it shall turn the well over to the oil lessees, who shall be required to reimburse appellant for the cost of the well; on the other hand if the oil lessees in drilling for oil should find gas in worth while quantities, then they are required to turn the gas well over to appellant, and appellant is required to reimburse them for the cost of the well. Copies of this lease have been filed with the Commission, these features have been gone into carefully before the Commission, not only in rate hearings, but also in hearings conducted by the Commission with respect to adequacy of appellant's supply of gas; and the Commission, at the time it filed its answer herein, was fully and thoroughly conversant with the terms of said lease, and knew that appellant had no oil rights in said lease, and nothing to gain by drilling for oil in the Osage Nation, and that it has never done so.

It is true that a portion of appellant's stock at the time of its original organization was issued in payment for leases in what was known as the Hogshooter Field; but appellant received also numerous other leases besides those located in that field. The leases in the Hogshooter field at that time had a developed open flow production of natural gas in excess of a billion cubic feet per day; and appellant operated such property and sold such gas and the proceeds therefrom went into appellant's business and into the construction of pipe lines and the development of other fields. At the same time there was a large amount of gas developed near Mounds, Oklahoma, which appellant used for its pipe lines.

Appellant's Hogshooter leases were charged off many years ago and have never entered into its inventories and appraisals in any rate hearing which has been had before the Commission.

That portion of defendant's answer referring to the Commission's order made on April 19, 1918, fixing rates for appellant, in which it is stated that the appellant never indicated any dissatisfaction with the rates fixed, is not true. The order made by the Commission on June 21, 1918, and referred to in said answer, was a temporary order only, to be in effect only until the completion of the valuation of appellant's property and the putting into effect of a permanent rate. On September 18, 1918, the Commission made what purported to be its permanent order. Appellant was

then engaged in building a new 12-inch pipe line 57 miles long from Oklahoma City southwest to the Cement field, which line, together with other lines built by appellant to other fields during that year, cost appellant more than a million and a half dollars. In said order, dated September 18, 1918, the Commission said:

"It is further ordered that when the Oklahoma Natural Gas Company shall have built a main pipe line into a southern field and shall have secured a supply of natural gas adequate for its patrons, that upon the completion of this line and connection thereof with its present system, the rates shall automatically be increased to a maximum of forty cents net per M cubic feet and a minimum of twenty-five cents net per M cubic feet."

This line was completed in January, 1919, and the gas in the Cement field was connected with it. Then appellant requested the Commission to install the forty-cent rate provided in said order. On January 31, 1919, the Commission ordered that appellant should not install the forty-cents rate until after a hearing thereon. Accordingly appellant rendered to said Commission an itemized statement of the additions and improvements it had made during said year. On April 18, 1919, the Commission made an order denying appellant the right to put into effect the forty-cent rate promised it upon the completion of said line and the connection of gas with it, a true and correct copy of which said order is hereto attached, marked Exhibit B and made a part hereof (Tr. 348-353). So that appellant was deprived of a return upon its investment of more than a million and a half dollars of new money, and it was not until September, 1919, a year after the order in which appellant was promised the forty-cent rate, that the Commission finally installed that rate; and before said order was installed appellant had extended its pipe lines from Cement to Walters, a distance of 55 miles, a large portion of that line being 16-inch pipe, and had made additional investment, including that and other extensions, of a million and a half dollars of new money. This made a total additional investment during the years 1918 and 1919 of more than three million dollars.

It is true, as avered in defendant's answer, that during the year 1917 appellant sold and delivered some gas to the Kansas Natural Gas Company. The entire proceeds of all

the gas sold by appellant to every person and corporation for every purpose went into appellant's earnings as a public utility, and were credited upon its books as earnings of the public utility.

All sales of gas by appellant for any and all purposes have at all times been accounted for to the Commission, and have been credited upon appellant's books as receipts from its earnings as a public utility. Since 1918 appellant has sold no gas to other pipe line companies. It has sold and does now sell gas to persons and corporations engaged in the oil and gas fields in drilling wells for oil and gas purposes, but this is done by appellant as a public utility and receipts from said sales are accounted for to the Commission, and go to make a part of the appellant's earnings as a public utility.

It is true, as alleged in defendant's answer, that during 1921 the price of coal and fuel oil has been such that appellant, considering the increased cost of procuring and furnishing gas and the immense distances it is now required to transport the same, could not sell gas for industrial purposes in competition with those fuels. During 1918 and 1919 and the first part of 1920 the price of oil and coal themselves were abnormally high, crude oil bringing as much as \$3.85 per barrel in Oklahoma, and fuel oil selling in Oklahoma at \$2.25 per barrel and the prices of coal ranging from \$7.00 to \$16.00 per ton. During those times appellant's inability to procure and maintain an adequate supply of gas rendered it unable to sell such quantities of industrial gas as the high prices of oil and coal gave appellant a demand for. Now, however, fuel oil can be purchased in Oklahoma for 75 cents per barrel, and the price of coal has also gone down, so that both are cheaper for industries than is natural gas at any price at which appellant can sell same, considering the cost thereof and the expense of transporting and delivering it. Also the cost of coal and fuel oil are more nearly normal now than they were in 1918 and 1919, but are still above normal; and there is no reason to believe that the price of either will advance, but on the contrary there is reason to believe that each will further decline, as the price of each is still much higher than it was during the pre-war period.

Furthermore, for appellant to sell more industrial gas is merely to deplete its supply that much more quickly and either to end appellant's business that much earlier, or else

to require appellant to make that much more quickly another enormous new investment in new pipe lines to new gas fields, provided the same can be found.

As to the averment in defendant's answer that appellant's operations under Order 1886 have been during abnormal periods of weather, affiant says that ordinarily the weather in Oklahoma, even in winter, is fairly mild and that extremely cold weather is itself unusual and abnormal, and when the same exists it is usually and ordinarily for very short periods of time. The winter of 1920 and also the winter of 1921, while there were no extremely cold periods in them, were nevertheless fairly representative, and the same were not abnormal. That appellant's financial condition is not due to abnormal weather during 1921 is shown by the results of its operation during the year 1920 under rates even higher than those fixed in Order 1886 and when appellant was purchasing gas more cheaply than it can now obtain it. Moreover, appellant sold as much gas for purely domestic purposes in 1921 as it sold in 1920.

As to the averment in the defendant's answer to the effect that the Commission has never attempted to require appellant to extend its pipe lines to new fields, this affiant says that while the Commission has never made an order expressly so requiring, nevertheless it has required appellant so to do by other means. Thus in the Commission's order of April 18, 1919, made after appellant had built its pipe line from Oklahoma City to Cement, in which order the Commission refused to permit appellant to put into effect the forty-cent rate which had been promised it upon its building its line to that field and connecting the gas to it, the Commission said:

"The records of this Commission show that large areas in the southern part of Oklahoma have been tested and proved for gas and that many wells are in existence; that they have great capacity, and the Commission is of the opinion that the Company, for the protection of its present investment and for the accommodation of its patrons, should seek to take advantage of the gas supply existing in the fields along the Texas border; any of which fields could be more aptly designated as a southern field than the Cement Field."

The Commission in said order further said:

"The company has a large investment which it ought to

protect, and as new fields are discovered they ought to be reached."

The Commission further said in said order:

"The Commission is of the opinion that the sources in the eastern and central part of the state, from which the company has heretofore drawn its supply, cannot be depended upon for any length of time, and that its patrons will be without gas in a short while unless other fields are reached, and the Commission is of the opinion that the lines should be extended to these fields;"

And the Commission refused appellant the forty-cent rate it had promised it, notwithstanding appellant showed that it then had connected an adequate supply of gas, until appellant should expend an additional million and a half dollars in building new lines to the Walters field.

Furthermore, in the winter of 1917-18, notwithstanding appellant had put forth every effort to get and supply all the gas its patrons needed, had spent large sums of money in drilling gas wells of its own and had purchased all the gas available to its pipe lines, nevertheless there was a shortage, and during a portion of the winter appellant was unable to furnish all the gas its patrons demanded at the high pressure which they desired. Complaints were filed before the Commission, praying that appellant be fined for not furnishing an adequate quantity of gas. Upon the completion of the hearing the Commission made an order in which it reviewed the situation and found that the appellant was furnishing all the gas it could get and had exercised care and diligence in undertaking to provide for and furnish an adequate supply, and it said:

"Thus viewing the situation in the light of the facts as they are and laying aside all bias naturally arising on account of unsatisfactory service, the justice of the situation impels the conclusion that the charge of negligence in this respect is unfounded and unreasonable."

Nevertheless the Commission made an order requiring appellant to rebate the bills of its customers because of the low pressure at which the gas was furnished caused by the inadequacy of the supply. This case was appealed to the Supreme Court of Oklahoma, which affirmed the same, and from there was taken to the Supreme Court of the United States.

In the following winter again appellant did not have sufficient gas and there was a shortage. The Commission had a hearing upon the matter, and appellant proved, and it was not disputed, that it had conducted an intensive drilling campaign for gas during the preceding summer, that it was then and had been purchasing all the gas which it could acquire from every person anywhere available to its lines, and that it had built new lines to new fields. It further proved by Engineers of the United States Bureau of Mines and by other competent gas people that more satisfactory service could be rendered with gas at 2 ounces pressure if only the appliance for burning it were properly adjusted than could be rendered at 4 ounces pressure; and a gas conservation agent of the United States Bureau of Mines made a demonstration before the Commission, carrying on cooking operations with one-tenth of one ounce gas pressure. Notwithstanding the evidence introduced the Commission again made an order requiring appellant to rebate and discount its gas bills in the same manner as had been done the year before.

Appellant, realizing that if those orders are finally affirmed and if the discounts and rebates should be required to be made on all its systems, they would operate to confiscate its property and deprive it of any opportunity for a reasonable return on its investment, was compelled by said order also to build new lines to new fields, notwithstanding it is held by legal authorities that when one goes into the business of furnishing a commodity which only nature makes, and the supply of which is limited, he dedicates to the public only the supply thereof which he has, and is not liable for a failure of supply and is under no legal obligation to build new pipe lines to new sources of supply.

In addition to the foregoing, on July 19, 1920, the chairman of the Commission wrote a letter to appellant, in which he stated that if appellant permitted a shortage of gas to result the following winter the Commission intended to put it into the hands of a receiver.

As to appellant's oil operations, the value of its property invested in its oil business is the sum of \$525,024.25, and the value of its property invested in the gasoline business is \$323,410.13. During the year 1920 appellant's net income from its oil operations was \$6,644.10. In addition to that, during that year appellant sold an oil lease for \$255,000.00.

For the first eleven months of the year 1921 appellant's net earnings was \$6,065.71. During the year 1920 appellant's net earnings from its gasoline business was \$48,985.65. During the first eleven months of 1921 appellant suffered a deficit in the operations of its gasoline properties of \$6,234.19.

As to the duration of appellant's business affiant says that 80 per cent. of the gas now available to it is in what is known as the Duncan field. This field was opened up about 18 months ago, and since then appellant has connected with 53 wells in said field, of which 18 have already failed utterly and have been abandoned; and of the 35 remaining a great many are now threatened with ruin by water. By far the greater number of said wells were connected with appellant's lines during the latter part of 1921. The open flow volume of said 35 wells has already decreased from more than 900 million cubic feet to about 459 million cubic feet, or about 50 per cent.; and the rock pressure has decreased about one-third. The Commission made a survey of said field in December, 1921, the official report of J. W. Duval, gas engineer for the Commission, with respect to said field was made to said Commission and a copy thereof is hereto attached, marked Exhibit C and made a part hereof (Tr. 354-356).

About December 1, 1921, appellant connected with 12 large wells in the Morris Gas Field, which wells were producing from 12 to 15 million cubic feet per day each, and had a rock pressure of 660 pounds. On January 10, 1922, about six weeks later, five of those wells were dead, and the open flow volume of the others had decreased to less than one-half of the original open flow volume, and the rock pressure had declined to 230 pounds. About 90 days ago appellant connected with six large gas wells in the East Bristow field, having an open flow volume running from 15 to 20 million cubic feet each per day and a rock pressure in excess of 600 pounds. Four of those wells are already dead and the open flow volume of the other two has been cut to less than one-half and the rock pressure has gone down to where the wells will barely feed into the pipe lines.

As to the averment in defendant's answer relative to the percentage of return which appellant should be permitted to earn, affiant says that in the Commission's order 1886 it purported to give appellant a return of 8 per cent. for interest or dividend and 5 per cent. for depreciation upon appellant's

distributing systems. The Commission did not state what percentage of return it intended to allow for appellant's producing and transmission properties, though it is stated in defendant's answer that 8 per cent. for interest or dividend and an additional 8 per cent. for amortization and depreciation is sufficient.

In the Commission's Order 1886 a distinction is made between the producing and transmission property on the one hand and the distributing property on the other, in that, when the gas is exhausted the producing and transmission property will become valueless except for what it will bring as junk, whereas it is stated that the distribution property might be used for distributing artificial gas. The city of Tulsa and possibly Sapulpa are the only cities in which appellant owns the franchise which are large enough to support an artificial gas plant, and appellant has no artificial gas franchise even in those towns, and the distributing systems in all the other towns served directly by appellant would become as worthless, upon the exhaustion of the supply of natural gas, as would the producing and transmission property.

Eight per cent. for return and 5 per cent. for depreciation, is the per cent. of return ordinarily allowed by the Commission, and all Commissions the country over, as a proper return for stable utilities, such as electric light plants and water plants, to the period of whose operations nature has fixed no limit, and which utilities, when their plants have been constructed, can operate with fair uniformity upon the investment made, without relative hazard and without the necessity of continually pyramiding their capital investment. When such utilities increase their capital it is usually for the purpose of increasing the volume of their business and the amount of money they can make; whereas appellant's business is unstable, it is constantly being required to pyramid its investment, its supply of gas is constantly being depleted, while it does a constantly dwindling business. The instability, insecurity and hazard of the business entitles a company such as appellant to a larger return than is given to stable utilities.

Appellant has had no opportunity to buy any gas since October, 1920, at less than 10c per thousand except the gas from one well which contained 41 per cent. nitrogen and had a B. t. u. content of 642 as against a normal B. t. u. content of 1,000. Appellant has had to pay as high as 15c per thou-

sand for gas on its Enid line and it has lost some gas for which it was paying 10c per thousand because other parties bid 11½c for it.

As to the Osage & Oklahoma Company, and with particular reference to the affidavit of W. E. Grimes respecting that company's application for an increase of rates in Tulsa in March, 1917, affiant says that said application was based upon the additional cost of gas to said company, and in said cause said company treated the valuation of its property as of no practical importance, and did not endeavor to prove what the real and actual value of the property was. In the order made by the Commission it is said:

"The application is based chiefly on the additional cost of gas produced by the Osage & Oklahoma Company in the Osage Nation, due to royalty required by lease of March 17, 1916."

The Commission also further said:

"Although the record is long, the case has not been tried along the lines ordinarily followed in developing a rate case, and many factors which the Commission usually takes into consideration in passing upon the adequacy of rates have not been mentioned in the testimony."

As showing the real grounds for the application, the Commission said:

"The evidence shows that heretofore Tulsa has enjoyed comparatively very low rates for natural gas; that the Osage & Oklahoma Company, which of late years has been supplying the city of Tulsa, has been securing its gas from acreage in the Osage Nation within a few miles of the city of Tulsa, and that it has been required to pay a rental of only \$100 per well per year. Thus the Osage & Oklahoma Company has had access to a practically free source of supply of natural gas, and the city has had the benefit thereof. Conditions have changed. On the 17th day of March, 1916, the Osage & Oklahoma Company, in order to retain control of its acreage in the Osage Nation was required thereafter to pay a royalty of 3 cents per thousand cubic feet for all gas taken from the field; to expend the sum of \$35,000 per year in the operation and development of its lease, and to pay for a minimum of 10,000,000 cubic feet per day whether this amount be produced or not. The matter of payment of the minimum in the sum stated is qualified, and has not yet been finally

adjudicated by the Interior Department, but for the present this minimum, which amounts to the sum of \$109,500 per year, must be paid."

Further on in this order the Commission said:

"As heretofore pointed out, this case has not been tried along the lines customary in the ordinary rate case, and many elements which are sometimes given weight by commission cannot be given serious consideration herein. It has been tacitly agreed, and the evidence shows, that some increase in rates should be allowed. Only the physical valuation of the properties of the applicant seem to have been considered in introducing the testimony."

The Commission then adverted to the fact that nothing had been claimed for going concern value, for cost of establishing the business, for working capital, or for other overheads or intangibles.

Then, going to the value of the physical property alone, the Commission said in said order:

"The cost to reproduce the physical property new, as given by the company, is \$840,822.16. This figure also is not disputed in the record."

Further on the Commission said:

"The accountants for the Commission, after taking into consideration advance in prices of material and in the cost of labor, and after making allowance for depreciation, have fixed the present fair value of the property in the city of Tulsa at \$386,897.73, and of the Osage pipe line at \$137,061, total \$523,959.07. *This takes no account of franchise rights, going-concern value, working capital, acreage, wells and equipment.*"

In that same case the Commission held that the necessary annual expenditures made by a natural gas company in developing its leases, including the drilling of new wells, must be given consideration in rate valuation, and that investment in producing gas wells is a proper capital account.

As to appellant's production expense mentioned in the affidavit of W. E. Grimes, affiant says that said production expense, as was explained to the Commission in said hearing, does not all relate merely to the drilling and equipping of gas wells. On the contrary, under appellant's system of book-keeping heretofore in force only its main pipe lines have been treated as transmission lines, and the other lines running

from the gas fields to the main pipe lines have been treated as production lines, and the expenses of the maintainance and operation of same were charged to the production account. For example, appellant has a main line from Tulsa to Oklahoma City. In 1917 it built a line from the Morrison Gas Field intersecting its main pipe line at Wellston. This line from the Morrison field was 52 miles long, 42 miles of it was 12-inch pipe and 10 miles of it was 10-inch pipe, and it cost \$826,000.00. That line has never been treated on appellant's books as a transmission line, but as a production line running from the gas field to appellant's transmission line, and all the taxes on that line, the cost of operating and maintaining it, and the cost of the gathering lines running from it to the wells and the taking them up and removing them from one well to another, all went into the production expense and not into the transmission expense.

The same thing is true of the south 50 miles of the line running from Oklahoma City to the Walters field, 33 miles of which is 16-inch pipe and 20 miles of which is 12-inch. These facts were fully explained to the Commission in said hearing.

In addition to the foregoing, appellant's production expenses include the expense of obtaining gas leases, the rentals paid on land, the royalties paid on gas wells, the expenses of drilling wells, the expenses of operating the wells, the expenses of repairs to the wells, and repairs to the production lines.

Assuming that defendant's statement is correct that appellant has an average leakage in its production, transmission and distributing systems aggregating 35 per cent from the mouth of the wells to the consumer's burning tips, which is the average the United States over, then for appellant to sell 20 billion cubic feet of gas in the year 1920, it was necessary that it produce and purchase together at least 27 billion cubic feet. Appellant produced about 7 billion cubic feet during said year at an expense, including the operation and maintainance of the production lines as hereinbefore explained, of about 18 cents per thousand. Oil and gas producers estimate that considering the cost of drilling and casing, and the short life of the wells, it costs from 12 to 20 cents per thousand to produce natural gas; and appellant can buy gas at 10 cents per thousand only because of the great amount of drilling done in Oklahoma for oil purposes in which

the oil operators find gas instead of oil, and who sell it for 10 cents per thousand rather than suffer the loss of the entire cost of the well.

Not all of the 7 billion feet of gas above mentioned, however, is in fact leakage. Appellant operates eight compressor stations with natural gas, which require in excess of 1 billion cubic feet annually. The gas thus used is in fact not leakage, but is properly a part of appellant's operating expenses; nevertheless it has not been charged to operating expense, but is included in the leakage.

As to the defendant's complaint respecting the amount of drilling which appellant did in 1920, affiant says that appellant was forced to do so by the Commission; first, by its requiring appellant to rebate or discount its bills when there was a shortage of gas in the winter time. Second, during the year 1920 the Commission called affiant before it on numerous occasions and inquired what appellant was doing to procure an adequate supply of gas for the following winter, and the Commission directed appellant to put on an intensive drilling campaign for the purpose of insuring an adequate quantity of gas for the coming winter. The Commission stated that appellant should drill, drill, drill, and keep drilling until it knew it had an adequate quantity of gas; that appellant should procure an adequate quantity at whatever cost, and that if appellant would get the gas the Commission would see that it received an adequate return. On July 19, 1920, the chairman of the Commission wrote appellant as follows:

"Unless proper and timely provision is made, the supply of gas this coming winter is going to be shorter, and the pressure lower, than has ever yet been experienced on the Oklahoma Natural's lines.

"Shortly after the meeting of your Board of Directors in June this year we inquired of your attorney, Judge Richardson, what provision was being made for an adequate supply of gas for this winter; and he informed us, and we also saw it stated in the newspapers, that the directors had authorized the construction of a compressor station at Wellston, one near Chickasha, and an addition to the one at Blackwell, and also that the directors had authorized an extensive drilling and purchasing campaign for increasing the supply of gas.

"We have been expecting ever since to see these stations

commenced and this campaign for an increased gas supply started, but so far no visible move has been made in that direction. It looks as though the Oklahoma Natural Gas Company is going to do as to those stations this year just as it did last year as to the one at Blackwell, delay them so that the shortage will be acute before the stations are completed.

"The Commission does not propose to have a repetition this winter of what we went through last winter. It is not going to be content with promises and excuses. The Oklahoma Natural is in the business of serving the public and it can make no claim to care, diligence or forethought, to having performed its duty or having done its best, when, on the heels of last winter's experience, its officers permit the spring and summer months to pass without doing anything to remedy the situation.

"The time has come for plain speaking and drastic action. The Oklahoma Natural has got to do business in a competent business like manner or else vacate in favor of some one who will. If it omits to erect these compressor stations in time, and a shortage of gas results this winter, this Commission intends without delay to put the Oklahoma Natural in the hands of a receiver, who will be energetic and competent, and to take it entirely from under your management and keep it so."

Appellant is now, and at all times since 1917 has been, purchasing all the gas in the territory reached by its lines; and the amount of gas which it has been and is able to purchase, unless supplemented by appellant's own drilling, would have been and would now be wholly and totally inadequate to supply the demands and needs of its customers.

As to appellant's report to the State Board of Equalization for taxation purposes, affiant says that said State Board itself adopted a schedule for pipe which it applies to the assessment of all pipe line companies, both oil and gas, and it directed all such companies to make their reports in conformity with said schedule. Said schedule adopted by said Board and in effect at the time of the making of said report, was as follows:

2-inch line -----	\$ 601.00 per mile
3-inch line -----	1,144.00 per mile
4-inch line -----	1,629.00 per mile
6-inch line -----	2,665.00 per mile
8-inch line -----	4,403.00 per mile
10-inch line -----	4,842.00 per mile
12-inch line -----	7,309.00 per mile
14-inch line -----	9,779.00 per mile
16-inch line -----	13,300.00 per mile

This schedule is much less than the real cost of a pipe line. Further, affiant is informed and believes that the assessed valuation of real estate in the various counties in Oklahoma in which appellant has property is not in excess of 50 per cent. of the market price thereof.

Further, under the laws of Oklahoma, the taxes upon all of appellant's leases and well equipment and gathering lines running from said wells are paid by the payment of a gross production tax upon the gas produced from said wells and leases, and said leases, wells and all equipment thereat are not liable to an ad valorem tax in Oklahoma.

As to that portion of the affidavit of W. E. Grimes stating that this affiant testified that only about 2 million cubic feet of gas per day was produced in the Morrison field, which is reached by a line costing \$826,000.00, the said statement is an error. Affiant never at any time gave any such testimony. Affiant testified in this cause and on several other hearings before the Commission that, under the statutes of Oklahoma and the rules of the Corporation Commission prohibiting the taking of more than 25 per cent. of the open flow volume of any gas well, appellant could only take about 2 million cubic feet a day out of the Morrison Field. Affiant did not testify that said field only had a production of two million cubic feet per day.

The statement contained in one of the affidavits filed by defendant that Samuel S. Wyer testified that the leakage in the Tulsa plant is about 35 per cent., is an error. On page 354 of the testimony taken in said case at Tulsa, Mr. Wyer gave the following testimony:

"I will give you the in-put and out-put from these plants as well as the plants where the Oklahoma Natural Gas Company is selling to other distributing companies: Tulsa, in-

put into distributing plant, 4,952,441 M cubic feet, sales 3,732,156 M cubic feet, loss 1,220,285 M cubic feet."

Chairman Walker:

"What percentage does the other towns show compared with Tulsa. You say Tulsa is what?"

A. "I have not computed them in terms of per cent. I can give it to you in just a minute if you want it. That would give Tulsa a loss of about twenty-three per cent. in round numbers."

Mr. Wyer further testified that he had made no measurement of the leakage, that he was computing the amount merely from figures furnished him by appellant, that appellant's meter was 8 miles from Tulsa on the Osage Line, that the leakage mentioned included not only that in the distributing system in Tulsa but also that on 8 miles of 8-inch high pressure transmission pipe line. During a portion of the time covered by the figures given Mr. Wyer, there were four drilling rigs drilling wells in the Osage field between said meter and the city of Tulsa which were being furnished with gas out of said line on a flat rate of \$30.00 each per day, and the gas used by those four drilling rigs also went into the leakage, each drilling well using on an average of 100,000 cubic feet of gas per day.

Mr. Wyer further testified that a portion of the leakage was caused by electrolysis, and that that was caused by the omission of the street railway company in Tulsa to properly bond its rails; that the railway company was using the underground pipe lines as its return circuit instead of putting in proper bonds, and that that condition was beyond the appellant's control and could only be remedied by the city or the Corporation Commission requiring the railway company to properly bond its tracks. Mr. Wyer further testified:

"You will find in some of the lines that it freezes. I do not mean that the ground will freeze, but that you will get a lower temperature, and just as soon as you get a lower temperature in the pipe the pipe contracts, and the only way it can contract is to slip in the joint, and in the summer time when the temperature increases the pipe expands and the only way that it can expand is to slip into the inside joint, and that action will cause favorable conditions for leakage.

Q. "All of the conditions causing leakage are inevitable, and the leakage can be prevented only by taking continual care of those conditions as they arise.

A. "Eternal vigilance is the price of a tight gas pipe.

Q. "And in order to do that the company has to earn the money with which to do that ?

A. "Certainly.

Q. "I want to ask you then, what do you say about a company that spent almost a million dollars in 1917, almost nine hundred thousand dollars more than it earned, has spent more each year since and including 1917 than it has earned, in undertaking to furnish gas, what would you say as to its ability to undertake to correct that leakage?

A. "Why, the company would be unable to carry on extensive leakage remedial measures under those conditions.

Q. "The correction of that leakage ought to be taken care of in a depreciation account, ought it not?

A. "No, I would say it should be entirely separate and a straight allowance in your operation budget.

Q. "For taking care of that leakage?

A. "Yes, sir.

Q. "Then, Mr. Wyer, I want to ask you this. You take a natural gas company that has been operating since 1907, and ran say until 1912 without paying any dividend, for a number of years paid only about two per cent., then I think for a year or two paid four per cent., and for the last three years paid eight per cent., and has never been permitted to earn or set aside any sum whatsoever for either depreciation or amortization, what would you say as to the ability of that company to correct leakage in its plants?

A. "Impossible.

Q. "Now as to the amount of leakage as compared with the leakage in an artificial gas system, I believe you said the leakage in an artificial gas system was about 100,000 cubic feet per year for every mile of three-inch line.

A. "Correct, in a well maintained system.

Q. "In an artificial gas system what is the usual pressure maintained?

A. "Expressed in terms of ounces, usually about one and one-half ounces.

Q. "If you double that pressure you increase the amount of leakage, do you not?

A. "Yes, sir.

Q. "And every time you increase the pressure you increase the amount of leakage, do you not?

A. "Yes, sir.

Q. "In a natural gas system where they contend they are entitled to a four-ounce pressure at the burner tips, could the leakage possibly be brought down anywhere approximating that in an artificial gas system?

A. "Not until the pressures are lowered. There is another feature that apparently all of you have lost sight of, and that is the lowering of the pressure is not only desirable from the viewpoint of more efficient utilization, but if the gas company maintains only low pressure at all times in its low pressure distributing system, and if it has a leakage, and no plant can be maintained without some leaks, and the gas gets out, if you have a pressure of only an ounce or an ounce and a half, the resistance of the soil will be such, the average soil, even though you have an actual opening between the inside of the pipe and the outside of the soil, that the soil will hold the gas in and the gas will not come out; but if you raise that pressure to in the neighborhood of four or five ounces, the pressure will then be high enough to force the gas out from the soil and into the atmosphere and that is one of the big fundamental reasons why the lowering of pressures is so important from the viewpoint of conservation of natural gas.

Q. "The attitude here is that the pressure must be maintained high.

A. "That is fundamentally wrong.

Q. "And in addition to that, there must be no leakage?

A. "Impossible.

Q. "How are those two to be reconciled?

A. "They cannot be reconciled."

As to the affidavit of Charles L. Daugherty stating that he worked under M. E. Durham in listing, inventorying and appraising appellant's property, and that appellant's leases were appraised at the face value recited in the leases, affiant says, first, no leases which appellant ever took ever recited on their face, or in any other portion thereof, what the values of said leases were. Second, if the said Daugherty meant that the appellant's valuation engineer included in the inventory and appraisal any oil leases and all gas leases which appellant had previous obtained, whether then still held and valuable or whether abandoned, then the said Daugherty is again mistaken. For example, it is contended and is a fact that appel-

lant at one time held an enormous acreage of leases in the Hogshooter Field in Washington County, Oklahoma. Durham's inventory and appraisal, which said Daugherty says he helped to make, contains only the following leases in Washington County: 210 acres of operated leases, appraised at \$968.42, and 470 acres of unoperated leases, appraised at \$760.09.

In the inventory and appraisal of Musson, who acted for appellant, the only leases in Washington County listed are: 210 acres of operated leases, appraised at \$968.42, and 360 acres of unoperated leases, appraised at \$260.09.

Before the Commission's engineers began the inventory and appraisal, appellant, through persons employed by it, had made an inventory of its property used and useful in its public service, which included no oil leases of any kind or character, and no property not used and useful in the public service, and no leases which had been exhausted or abandoned, or which had been proven not valuable for gas. When Mr. Durham began the inventory for the Commission, he called upon appellant for its maps, data, inventories, invoices, and all other documents which he thought would be of assistance to him, and the same were turned over to him. On December 2, 1919, he wrote appellant a letter in which he stated:

"On September 5th, I began an inventory of the properties of the Oklahoma Natural Gas Company for the Corporation Commission. At the time we took up this work we did not know that this company had begun and almost finished the physical inventory of its property, and it also had adopted an entirely new system of bookkeeping, and systemizing of its property. We soon ascertained this, however, and after proper investigation of the inventory and system of accounting, I concluded that, for the State Corporation Commission, I would accept the inventory made by this company after I had checked same carefully to see if it was correct. We have spent three months making this check, and I want to congratulate you and Mr. Compton and Mr. T. S. Llewellyn on the thoroughness and business like manner in which this inventory has been made. We have found very few mistakes, and such as have been found have been corrected."

The inventory which appellant had made at that time was not the inventory which was subsequently made by Mr. Musson.

Also the said Durham, in transmitting and filing his inventory and appraisal with the Commission, attached thereto a letter addressed to the chairman of the Commission in which he said:

"Pursuant to the Commission's instructions of September 5, 1919, we have made a detailed Inventory and Appraisal of the properties of the Oklahoma Natural Gas Company, with head office at Tulsa, Oklahoma. This inventory was completed as of September 30, 1919, *and covers the properties of this company used and useful in the production, transportation and distribution of natural gas in the State of Oklahoma.*

"We spent approximately eight months in making this inventory, using from sixteen to thirty men in the operation, and we can safely say that each and every item listed in this inventory has been carefully examined and listed, before entering the inventory.

"All pipe lines belonging to this Company, whether gathering lines, main lines, or distributing lines, have been blue printed, walked and dug into, at least every one-half mile, and in a greater part thereof, they have been examined by excavation every four hundred feet. In cities where this company distributed gas, the lines have been located with an electric pipe locator, and dug into on every city block.

"Every building belonging to the Gas Department of this Company has been invoiced and listed, by inspection, and the material listed in each building was so listed while the men making the inventory were in the building, and great care has been exercised in making the lists of material included in each building as accurate as possible.

"Every item of machinery listed therein, located at compressor plants, on leases, pumping stations, etc., was listed and examined by the writer, and every care was used to get the exact description, location and condition of each item listed.

"The original cost theory has been used in pricing the items listed herein, as nearly as could be possibly done. Over forty thousand vouchers in the company's files have been examined, copied and reduced to a card system, ready for immediate examination. A large per cent. of this property could be identified with vouchers, however, on such items as

pipe, bought over a period of years, and installed over a period of years, average weighted prices were used, taken from vouchers as above stated.

"On all leases, rights-of-way and fee properties, only actual cost thereof was considered; each and every lease, each tract of fee property, and each rod of right-of-way having been taken from the original instrument, granting same to the Oklahoma Natural Gas Company, and no value was added to these leases, rights-of-way, or fee properties, unless vouchers were in the files showing such expenditures, or it could be proven to us beyond all doubt, that such expenditures were made.

"Vouchers were accessible for pricing the gas wells belonging to this company and were used in each and every instance. We have made no allowances, and have not considered them at all in our values, for such items as 'Engineering and Superintendence during construction,' 'Law expenditures during construction,' 'Injuries during construction,' 'Interest during construction,' and 'Taxes during construction;' these items we leave for the Commission to add in making the final order.

"We have not considered such items as 'Going concern,' 'Franchise values,' or 'Working capital' in this inventory, and these items are also left for the Commission to establish."

The entire item for operated leases contained in Durham's inventory and appraisal amounts to only \$327,135.65; and the entire item in his inventory and appraisal for unoperated leases, which appellant carried as reserve acreage, amounts to only \$451,415.42.

As to the statement in Mr. Daugherty's affidavit that the leases which appellant acquired from the constituent companies at the time of the merger were listed and appraised at the value recited in the respective assignments from the assignee to appellant, affiant states that the original of all those assignments made by those companies to appellant are now in appellant's possession. A separate assignment was made for all the leases in each county, and each and every one of the assignments recited a consideration of only \$1.00.

Neither Mr. Durham's nor Mr. Musson's inventory and appraisal included any oil leases, any gas leases in the Hogshooter field, or any other gas leases which had been ex-

hausted or abandoned, or which had proved valueless for gas.

When appellant was organized in 1906 it had five stockholders. In November, 1921, it had 2,958 stockholders. There is not one stockholder now who was a stockholder in 1906.

In appellant's rate case in 1918, W. J. Hagenah, an engineer and accountant, and a member of the firm of Hagenah & Erickson, of Chicago, Ill., made an inventory and appraisal of appellant's public utility property, and found the same to be of the value of \$20,467,968.00, of which sum \$185,511.00 was invested in gasoline plants.

Appellant's present indebtedness is \$3,674,690.96. The statement of its liabilities is hereto attached, marked Exhibit D and made a part hereof (Tr. 357-362). The accounts payable shown in this statement are all for materials and supplies for carrying on appellant's natural gas business. Appellant had \$120,000.00 in ad valorem taxes due on December 31, 1921. It was unable to get the money with which to pay the same, and was able to pay only about \$17,000.00 thereof. Appellant owes to banks for borrowed money with which to pay supply bills, cost of maintainance and of building new lines, \$1,619,393.86. These notes and indebtedness are due between now and June 1, 1922, and appellant has no money with which to pay same, and under the rates prescribed in said Order 1886, it will be wholly unable to meet the said obligations or any portion of them, and if appellant is remitted to the rates prescribed by the Commission the result will be that it cannot make even a partial payment on said indebtedness, and will be unable to make any showing of better prospects to its creditors, and therefore unable to procure extensions, and it will be unable to escape a receivership. Three of appellant's directors are endorsers on its notes, appellant being wholly unable to borrow the money except upon the personal endorsement of said directors, and if they should be required to pay the same it would involve them in financial ruin.

In 1919 appellant sold for domestic purposes 10,402,923 M feet; in 1920, 9,254,030 M feet; in 1921, 9,796,564 M feet.

In 1919 appellant sold for industrial purposes 6,571,302 M feet; in 1920, 4,434,093 M feet; in 1921, 2,011,681 M feet.

For drilling gas, appellant sold in 1919, 3,946,106 M feet; in 1920, 5,590,875 M feet; in 1921, 2,828,814 M feet.

For wholesale gas, *i. e.* gas sold to other independent dis-

tributing companies, not under divisional contracts, but at a town border rate, appellant sold in 1919, 1,056,848 M feet; in 1920, 751,788 M feet; 1921, 636,605 M feet.

Its sales of gas have decreased from 29 billion in 1917 to 14 billion in 1921.

In 1917 appellant and its constituent companies sold for domestic and industrial purposes, in the towns and cities served by them directly and indirectly, 17,358,415 M feet and it sold for drilling purposes and to other pipe line companies the remainder of said 29 billion feet, but the entire proceeds of all the gas sold was received and accounted for as earnings of the public utility.

#### EXHIBIT C.

(Tr. 354-357.)

Exhibit C to the foregoing affidavit is a copy of the official report of J. W. Duvall, Gas Engineer of the Corporation Commission, made on December 15, 1921, after an investigation of the Duncan Gas Field, from which appellant obtains 80 per cent. of its gas. The report states that participating in this inspection and investigation were J. W. Duvall, Gas Engineer of the Commission; Ben F. Davis, Chief Conservation Officer of the Commission; Geo. W. Casey and J. W. Clinkscales, Conservation Officers of the Commission; A. L. Walker and E. R. Hughes, members of the Commission, and two of appellant's representatives.

This field had been brought in only 18 months before. Appellant had been connected with 53 wells in that field, and all of them except 35 were already dead. The report states that of the 35 wells still on the line the original average rock pressure was 568 pounds; the present average rock pressure, 379 pounds. The original open flow volume was 911,950,000 cubic feet; the present open flow volume was 459,635,000 cubic feet. The report stated that of the 35 wells 18 were now making some water, showing that the field was going to pieces.

#### EXHIBIT D.

(Tr. 357-362.)

Exhibit D is a statement of appellant's indebtedness as of January 28, 1922. The total indebtedness was \$3,674,690.96. Of this amount \$1,010,000.00 was funded indebtedness. Ac-

counts payable were \$201,563.52. Notes payable were \$1,619,393.86. The amount due producers of gas for gas purchased was \$269,510.21. Ad valorem taxes due and unpaid was \$225,447.83.

Details of each and all of the items are given showing to whom the indebtedness is due and when due.

THOMAS H. McCONNELL.  
(Tr. 269-270.)

Thomas H. McConnell made an affidavit on February 10, 1922, which was filed in said cause and is in substance as follows:

I reside in Oklahoma City, am 54 years of age, am engaged in the business of abstracting titles to real estate, and have been so engaged in Oklahoma for 19 years.

On or about July 15, 1921, for the purpose of ascertaining the relation which the market value of real estate in Oklahoma County, Oklahoma, bore to the assessed valuation for taxation purposes, I examined the records of conveyances of real estate in Oklahoma County, Oklahoma, noting the dates of same, the descriptions of the properties conveyed, the considerations paid therefor, determining the consideration both by the recital of the conveyance and by the amount of revenue stamps attached to the conveyance; and I also examined the records of the County Assessor of Oklahoma County and ascertained the valuation at which the said property so conveyed was assessed for taxation after said assessments had been equalized by the County Equalization Board; and I made a list of the said properties, conveyances and assessments so examined, which said list is representative of the relation of the values of real estate in Oklahoma County to the assessments thereon for the purposes of taxation. Said list includes land sold in practically all parts of Oklahoma County, shortly before and shortly after the tax assessing date, which tax assessing date was January 1, 1921. A copy of said list so made is hereto attached, marked Exhibit A, and made a part hereof, and the same is true and correct. The date given opposite each entry in said exhibit is the date of the conveyance. Said entries also show the names of the grantors and grantees, the descriptions of the lands conveyed, and the amounts paid therefor. Following that is the value placed upon said lands for the purposes of taxation. The total

amount paid for all the lands shown in said Exhibit A was the sum of \$2,759,958.66, and the total amount at which the said lands and improvements were assessed for taxation as of January 1, 1921, was the sum of \$1,492,850.00, which was 54 per cent. of the sum for which the said real estate was sold shortly before or shortly after the date of said assessment.

EXHIBIT A.  
(Tr. 271-308.)

Exhibit A is a list of the lands sold, the dates of the conveyances thereof, the names of the grantors and grantees, the descriptions of the properties sold, the considerations for which the same was sold and the sums at which the same were assessed for taxation.

D. A. RICHARDSON.  
(Tr. 309.)

D. A. Richardson made an affidavit on February 23, 1922, which was filed in this cause, and which is in substance as follows:

Exhibit A, attached hereto and made a part hereof, is a true and correct copy of a portion of the testimony of W. E. Grimes, auditor of the Corporation Commission of Oklahoma, given upon a hearing of the application of the Okmulgee Gas Company before the Commission on December 20, 1921. I was present and personally heard the said W. E. Grimes give said testimony, and I have compared Exhibit A with the official transcript of the testimony of said Grimes, made by said Commission, and Exhibit A is a true and correct copy of said official transcript.

EXHIBIT A.  
(Tr. 309-310.)

The substance of Exhibit A is as follows:

In July, 1921, the Commission adopted 10 per cent. as the standard of leakage. I cannot produce a copy of the order because there was no order. No hearing was held on the matter of adopting said standard. No company was notified to appear or show cause why the standard should not be adopted. It had been the practice of the Commission to adopt a certain amount for leakage in each particular case and in order to arrive at a uniform practice, as I understand it, after

a full and complete investigation, this 10 per cent. was decided upon. By full and complete investigation I merely mean that the Commission satisfied itself. It did not go out and invite the public to come in. Prior to July, 1921, the Commission had made no specific order about leakage, though it had done so in specific cases. When the Commissioners decided among themselves that they would only allow 10 per cent. for leakage, they did not increase the gas rate of any of the gas companies in order to enable them to correct their leakage and bring the standard up to 10 per cent.

R. C. SHARP.  
(Tr. 363-364.)

R. C. Sharp made an affidavit in rebuttal on February 21, 1922, which was filed in said cause, and which was in substance as follows:

Exhibit A (Tr. 364-369) hereto is a true and correct copy of order 1829 made by the Corporation Commission on December 20, 1920, fixing a temporary rate to be charged by appellant in all the distributing plants owned by it, and by all the distributing plants which appellant furnished gas, which said order was to be in effect from January 1, 1921, until March 31, 1921.

In the Commission's order 1886 it is stated that it would take judicial notice of the fact that the price of gas at the mouth of the well had declined. No evidence was introduced before the Commission to the effect that the price of gas at the mouth of the well had declined, and the fact is that the same has not declined, but appellant was being required at the time the Commission made said order, and has been required ever since, to pay the sum of ten cents per thousand at the mouth of the well for all gas purchased, and in some instances gas is being sold at the mouth of the well for 11½ cents per thousand.

EXHIBIT A.  
(Tr. 364-369.)

Exhibit A is a copy of the Commission's order 1829, being a temporary order made by the Commission upon appellant's application in the same cause in which order No. 1886 herein complained of was made.

In Exhibit A it is stated by the Commission that many hearings had been had as to the value of appellant's property used and useful in serving the public, and as to its operating expenses, and many exhibits had been introduced.

It is recited that J. M. Gayle, of the firm of Musson & Gayle, Accountants and Engineers, submitted an exhibit purporting to be an audit of appellant's books and vouchers, showing the amount of its investment, and finding the original cost of appellant's property as of October 31, 1919, as <sup>own</sup> by appellant's vouchers, to be \$16,190,000.00. H. E. Musson of the same firm made an inventory and appraisal of appellant's property upon both an original cost basis and a reproduction cost basis, and found the value of appellant's property, as of October 31, 1919, upon the original cost basis to be \$16,061,960.00. M. E. Durham, appraisal engineer for the Commission, made an inventory and appraisal of appellant's physical property alone as of September 30, 1919, and found the original cost of appellant's physical property as of that date to have been \$13,150,651.39. Mr. Durham testified that he omitted from his inventory and appraisal the entire labor charge upon the installation of appellant's natural gas pipe line from Cement to Walters, a distance of 55 miles; and that no overheads or intangibles were considered in his appraisal, and that considering the omission of the labor items upon the Walters line and the omission of overheads and intangibles, there would be little if any difference between his appraisal and the original cost appraisal of Mr. Musson. Mr. Dalious, appellant's auditor, filed exhibits showing additions to appellant's property from October 31, 1919, to May 13, 1920, to be \$740,382.00, and the additions to the property since May 31, 1920, to be \$729,717.38. All the evidence was to the effect that the average depreciation of appellant's property was 18 per cent. All the above testimony stands in the record undisputed.

The Commission further said:

"The Commission is not at this time prepared to express an opinion as to the fair, reasonable value of the property now used and useful in serving the patrons of the Oklahoma Natural Gas Company, but it is clearly apparent that if the company is not to be deprived of the value of certain of its properties by failing to receive compensation therefor during the time when such property is being used to aid in rendering

service, and if future customers are not to be unjustly burdened by payment of return upon property no longer of material service to them, then there must be provided a fund sufficient to take care of line extensions, compressor stations and such other expenditures as are from time to time necessary in maintaining the best possible standard of current service.

"The Commission, without undertaking to place a precise value upon the property of the Oklahoma Natural Gas Company used and useful in rendering its services, is of the opinion that, except for the continued outlay which the company is required to make in order to extend its lines to new gas territory and to build compressor stations, and to meet competition from interstate companies, its earnings under the present prevailing rates would be reasonable.

"The evidence shows that the peak of gas production available to the Oklahoma Natural Gas Company was reached in the year 1917, and that since that time the supply has more or less steadily declined until the amount of gas now available for distribution by this company is approximately only two-thirds as much as was available during the year 1917, while the number of consumers desiring to use the gas has continually increased.

"For some two years now the company has declined to extend its lines to serve new customers whom it was not obligated to serve; but the increase of population and the erection of new buildings in towns and cities that the company was already serving, and where the obligations to serve without discrimination compels extensions, adds hundreds of new customers each year.

"The distribution of a decreasing supply of gas among an increased number of patrons has steadily brought on a crisis that has resulted in great inconvenience and much actual suffering during extreme cold weather upon the part of those not supplied and equipped to use other fuel.

"In its efforts to reach new fields and to secure additional supplies of gas the evidence shows that the company has expended approximately one and a half million dollars annually for the last four years. Evidence shows that a large portion of these expenditures has gone into capital account, although largely incurred in order to enable the company to continue

serving patrons already attached to the system; this by reason of the fact that the receipts of the company were insufficient to cover those expenditures and leave the necessary funds for the payment of dividends upon the investment.

"The evidence shows that the extensions and additions thus made in an effort to maintain service has added approximately 50% to the company's capital account, making the payment of dividends more difficult and new capital relatively harder to secure. As the supply of gas from existing fields is exhausted rapidly the company that is unable to make extensions to new fields must inevitably fail to supply gas in any measure approximating the needs of its patrons. A reasonable return upon the money invested in the property actually used and useful in supplying the needs of the public cannot be denied if a continuation of the service is desired; nor can the service be continued except the funds be available to make extensions to new supplies of gas, when available, and to provide pump stations to force through the lines low pressure gas that can not be delivered otherwise.

"It is clearly apparent from the evidence in this case that the present rates applied to the available supply of gas will not produce sufficient funds to meet the various items of expense referred to above, each of which must be met, if the available supply of gas is not to decline and the service deteriorate to a point where it will be utterly unsatisfactory and wholly inadequate."

Further on the Commission said:

"The distributing companies maintain that the percentage contracts heretofore entered into between their several companies and the Oklahoma Natural Gas Company should not be disturbed. There has, however, been no evidence produced in this hearing tending to show that any distributing company interested is not now receiving an adequate return for all service rendered by such company. If these distributing companies are now receiving an adequate return, it would be clearly unjust to the consumers to permit these separate companies to share in any additional rate authorized at this time. The question as to whether these percentage contracts heretofore entered into between the Oklahoma Natural Gas Company and its several agent companies are private and inviolable contracts and beyond the power of the state to abrogate or modify, is now pending before the Supreme Court of

this State. Pending the decision of the court the Commission will express no opinion upon this question, but no necessity having been shown for increased returns to any distributing company, the Commission will not now make any provision for any increased compensation to any distributing company, but will retain jurisdiction of this case until after the decision of the Supreme Court in the case above referred to, and should the court hold these percentage contracts to be private, inviolable contracts, this order may be revised to conform to the decision of the court.

"The Commission is also of the opinion that except for the continual outlay necessary upon the part of the Oklahoma Natural Gas Company in extending its lines to new gas fields, installing compressor stations and other expenses incurred in supplementing and renewing the gas supply, the present return to the Oklahoma Natural Gas Company would cover all ordinary expenses and provide a reasonable return upon its investment; the Commission, however, is convinced that this company is not longer able to secure new money with which to make such extensions, improvements and betterments as to give reasonable hope for a supply of gas in any way adequate to the needs of its customers, and the Commission is agreed that the public interest can best be served by providing a fund which is available to meet necessary expenses that may be incurred in securing additional gas supplies. The Commission knows of no way to provide such a fund except through the medium of an addition to the rates now in effect.

"It is therefore ordered by the Commission:

"First: That the temporary rates heretofore made effective on April 15th, 1920, be continued in effect until March 31st, 1921, or until further orders of this Commission. All sums collected under the said rates to be apportioned between the Oklahoma Natural Gas Company and the several distributing companies upon the present basis unless and until otherwise ordered by this Commission.

"Second: It is hereby ordered that in all towns or cities served by the Oklahoma Natural Gas Company, either directly or indirectly, excepting Claremore, Inola and Ramona, and excepting the town of Carney and the cities of Duncan and Marlow, to which gas is furnished at a city gate rate, the

following rates shall be charged and collected for all natural gas furnished for any purpose:

"For the first 100,000 cu. ft. per month 58c per M cu. ft.

"For the next 400,000 cu. ft. per month 50c per M cu. ft.

"All in excess of 500,000 cu. ft. per month 40c per M cu. ft.

"A penalty of two (2) cents per M cu. ft. on all bills not paid on or before the 10th day from date of same.

"All sums accruing from the collection of the additional rates herein provided, over and above the rates now in effect, to be paid over monthly as collected, to the Oklahoma Natural Gas Company and by said company to be set aside, reserved and maintained as a special fund provided by its patrons to be used by it, with the approval of this Commission, for the laying of additional pipe lines, installing compressor stations, or such other improvements or betterments as may be agreed upon between the company and the Commission as may reasonably be relied upon to provide additional supplies of natural gas from the patrons of this company.

"This order shall take effect and be in force from and after January 1, 1921, until March 31, 1921, or until otherwise ordered by the Commission.

"Done at Oklahoma City, Oklahoma, this 20th day of December, 1921."

J. E. DALIOUS.

(Tr. 370-371.)

J. E. Dalious made an affidavit in rebuttal in this cause on February 21, 1922, which is in substance as follows:

I have been appellant's auditor since December 15, 1919. Since I made my former affidavit herein appellant has closed its books for the year 1921. During December, 1921, appellant's gross income from its sales of gas for all purposes, excluding Claremore, Inola, Ramona and Bixby, which are not involved in this case, and calculating said income at the rates fixed by the Commission under its order 1886, was the sum of \$546,125.50. Its total operating expenses for the month of December, 1921, excluding the expenses at Claremore, Inola, Ramona and Bixby, were \$438,136.92, leaving appellant the net operating income for December, 1921, of \$107,988.58.

From July 1, 1921, the date said order 1886 went into

effect, to December 31, 1921, appellant's gross earnings from the sale of gas for all purposes, excluding the gas sold in Bixby, Claremore, Inola and Ramona, at the rates prescribed in said order 1886, were \$1,693,300.36. Its total operating expenses for the same period were \$1,786,951.33, leaving a net operating deficit during said six months of \$93,650.97. This deficit exists without charging to expense any sum for either amortization or depreciation. This deficit is merely the excess of appellant's actual operating expenses over its gross income during that period.

During the calendar year 1921 appellant's gross earnings from the sale of gas for all purposes, excluding Claremore, Inola, Ramona and Bixby, was \$4,297,051.97, the first six months of the year being under the rates existing prior to the making of Order 1886, and the last six months of the year being at the rates prescribed in said order. Appellant's total operation expenses during said calendar year were \$3,762,436.02. In these expenses there is included no sum for either amortization, depreciation, or dividends, nor is there included any sum invested in new lines or extensions, or in compressor stations. Appellant's net operating income for 1921 upon the rates actually existing during said year was \$534,615.95.

During the year 1921 appellant's total sales of domestic gas in all its own plants except Claremore, Inola, Ramona and Bixby, and in all the local distributing companies to which the appellant furnished gas for distribution, was 9,876,564 M cubic feet. Of this amount appellant itself sold and distributed 3,449,196 M cubic feet in the towns and cities in which it owns the distributing systems, excepting, however, Claremore, Inola, Ramona and Bixby, and 6,347,368 M cubic feet were sold by local independent distributing companies to whom appellant furnished the gas.

During the year 1921 appellant's total sales of industrial gas were 2,014,990 M cubic feet, of which 703,233 M cubic feet were sold by appellant in its own distributing plants, and the remainder was sold by independent distributors to whom appellant furnished the gas.

During the year 1921 appellant's total sales of gas for drilling purposes were 2,028,814 M cubic feet.

Appellant's total sales of gas during the calendar year 1921 for all purposes, excluding, however, the gas sold at

Claremore, Inola, Ramona and Bixby, was 13,840,368 M cubic feet; and including Claremore, Inola, Ramona and Bixby, was 14,044,728 M cubic feet.

J. E. DALIOUS also made an affidavit on February 25, 1922, which was filed in this cause and which was in substance as follows (Tr. 372-375):

The amounts of natural gas sold in appellant's own distributing systems in the months of January, 1920, January, 1921, and January, 1922, are as follows:

January, 1920.	
Industrial Gas -----	62,425 M
Domestic Gas -----	1,103,158 M
Total -----	1,165,583 M
January, 1921.	
Industrial Gas -----	78,831 M
Domestic Gas -----	872,886 M
Total -----	951,717 M
January, 1922.	
Industrial Gas -----	76,354 M
Domestic Gas -----	798,658 M
Total -----	875,012 M

In January, 1920, the demand for industrial gas was large enough that appellant could have sold as much industrial gas as it did domestic gas; but because the month was extremely cold and appellant's supply of gas inadequate, it cut off its industrial consumers in order that its domestic consumers might be adequately served. In January, 1921, and also in January, 1922, the demand for industrial gas was practically negligible, owing to the low price of coal and fuel oil. Within the last month there has been a reduction in the price of Pennsylvania crude oil, and within the last three weeks there has been a reduction of 30c per barrel in the price of Healdton crude oil, and within the last two weeks there has been a reduction of 25c per barrel in the price of Arkansas crude, and it is now possible to buy fuel oil at from 50 to 60 cents per barrel.

The gross revenue which appellant received for the gas which it sold in its own distributing plants in January, 1920, at the rates then in effect, was \$352,345.60. The gross revenue

which it received from the gas sold in January, 1921, at the rates prescribed by the Commission and then in effect, was \$373,471.22. The gross revenue which appellant would have received from the gas sold in its own distributing plants in January, 1922, at the rates prescribed by the Commission and complained of in this case, would have been \$333,466.80.

The total amount of gas which appellant furnished to independent distributing companies during the months of January, 1920, January, 1921, and January, 1922, was as follows:

January, 1920.

Domestic Gas .....	871,555 M
Industrial Gas .....	61,339 M
Total .....	938,894 M

January, 1921.

Domestic Gas .....	734,126 M
Industrial Gas .....	98,453 M
Total .....	832,579 M

January, 1922.

Domestic Gas .....	988,602 M
Industrial Gas .....	156,236 M
Total .....	1,144,838 M

Appellant's gross income from the gas furnished to local distributing companies in January, 1920, at the rates then prevailing, was \$235,272.83. Its gross income from the gas furnished to such distributing companies in January, 1921, at the rates then prevailing was \$254,906.58. Its gross income from the sale of gas to said distributing companies in January, 1922, at the rates fixed by the Commission, was \$278,397.70.

The amounts of wholesale gas sold by appellant during the months of January, 1920, January, 1921, and January, 1922, were as follows:

January, 1920.

Domestic Gas .....	75,824 M
Industrial Gas .....	None
Total .....	75,824 M

## January, 1921.

Domestic Gas -----	79,695 M
Industrial Gas -----	None
Total -----	79,695 M

## January, 1922.

Domestic Gas -----	78,747 M
Industrial Gas -----	640 M
Total -----	79,387 M

Appellant's gross revenue from wholesale gas sold in the months of January in said years, at the rate prescribed by the Commission, was as follows:

January, 1920, \$14,438.43

January, 1921, 15,692.64

January, 1922, 19,814.75

Appellant's total gross revenue from its sales of gas for all purposes, excluding Bixby, Inola, Claremore and Ramona, at the rates prescribed by the Commission, was as follows:

January, 1920, \$602,056.86

January, 1921, 654,070.44

January, 1922, 631,679.25

Appellant does not have large sales of industrial gas in the months of January and February, because those months are so cold that its entire supply of gas is needed for its domestic patrons, and therefore for the most part industrial consumption is cut off during those months. During the spring, summer and fall months appellant's industrial consumption, prior to the fall of 1920, had been very large. Since then, due to the decline in the price of coal and fuel oil, and to the increased cost of gas in the field, the greater distances appellant is required to transport it, and the consequent greater cost of furnishing it, appellant has been unable to sell any substantial amount of industrial gas even in the spring, summer and fall months. The result is that during those months, owing to the fact that its patrons are not heating their homes, but are using only a pittance of gas for cooking and hot water heating purposes, appellant operates at a deficit, and the only months during the year when its

income exceeds its expenses are November, December, January, February and March, and the only months out of those five when its income is substantially in excess of its expenses are the months of January and February.

Appellant's gross income in its own distributing plants during the month of January, 1922, at the rates charged by it under the restraining order granted by the court, was \$466,145.93. Its gross income from the independent distributing companies during that month at the rates charged under the restraining order granted by the court, was \$377,257.90. Its gross income during that month from wholesale gas at the rates charged by it under said restraining order was \$27,689.44. Its gross income from its entire sales of gas for all purposes during January, 1922, at the rates charged by it under said restraining order, excluding the gas sold at Bixby, Inola, Claremore, and Ramona, which are not involved herein, was \$871,093.28.

It requires from 45 to 50 days from the end of the month for appellant to receive, classify and tabulate and aggregate its expenses during any one month; so that it is impossible at this time to state with exactness what the appellant's expenses were during the month of January, 1922. Its expenses during December, 1921, were \$438,136.92. During that month appellant's expenses for gas purchased was \$191,167.24, whereas its expenses for gas purchased in January, 1922, were \$215,512.53; and I estimate that appellant's total expenses during the month of January, 1922, will be at least \$475,000.00.

R. C. SHARP AND J. E. DALIOUS.

(Tr. 376-378.)

R. C. Sharp and J. E. Dalious made an affidavit in rebuttal on February 21, 1922, which was filed herein, and which is in substance as follows:

Respecting that portion of the affidavit of C. S. Thompson, filed by the defendants, stating that appellant carries as a part of its regular operating expenses accounts covering changes in construction, repairs to wells or leases, repairs to lines, repairs to buildings, drilling wells, surrendered leases, and abandoned wells and lines, it is true that said items are so carried in appellant's operating expenses, and that the operating expense account is the proper and only

account in which to carry the same. The only portion of the items of changes in construction, repairs to wells or leases, repairs to lines, repairs to buildings and drilling wells, which enters into appellant's operating expense account is the labor item. For example, if a pipe line is taken up and removed to and laid in another place, the expense of so doing would come under the head of change in construction; but only the labor item, *i. e.*, the cost of the labor in taking up the line and the cost of transporting it to its new location and relaying it, is put in. Whenever leases are surrendered, only the actual cost of the lease is charged to operating expense.

The same thing is true with respect to abandoned wells and lines. Appellant never abandons any pipe which it can get out of a well, and it never abandons any pipe lines. Whenever a gas well is exhausted the pipe in the well is pulled and is used at other places if it is possible to get the pipe out, and only the labor items are charged to expense. When the gas from a well or gas field is exhausted, the pipe lines are taken up and are used again by laying them to new wells and new fields, and only the labor item is charged.

In the said Thompson's affidavit it is stated that all said accounts should be charged to depreciation reserve fund. Since these affiants have been connected with the appellant there has been no depreciation reserve fund, and appellant has not earned any money which could go into a depreciation reserve fund.

As to that portion of said Thompson's affidavit in which he states that the interest paid on borrowed money is not justly chargeable to expense because appellant is allowed a working capital, affiants state that the Commission's order 1886 purported to allow a working capital of only \$494,382.39, and it excluded as working capital and from appellant's valuation altogether some \$680,000.00 of property, a large portion of which was warehouse stock which appellant was required to carry. Also appellant's rates have been such that it has been required to borrow, and now owes, more than \$1,660,000.00 of floating indebtedness, all of which is due between now and the first day of June, and which money appellant was required to borrow in order to pay its expenses in furnishing the public with gas. Appellant is entitled to charge the interest on said money as a part of its operating expenses and the same is so recognized by all auditors and accountants.

Referring to that portion of said Thompson's affidavit in which it is said that appellant has charged the dividends which it has paid as ordinary operating expense, affiants state that said statement is absolutely untrue; and that appellant has never charged dividends as an operating expense. The earnings, expenses and dividends as set forth in the bill in this case and heretofore shown in the affidavits filed, and as corrected and shown in the rebuttal affidavit of R. C. Sharp, are true and correct. The net earnings so shown in said bill and in said affidavit constitute merely the excess of appellant's gross income over its actual operating expenses, not considering dividends as an expense, and not considering the cost of new lines to new wells and the costs of new compressor stations as an expense. In appellant's profit and loss statements during past years it has shown the dividends paid, for the purpose of showing appellant's surplus after paying dividends; but it has never charged dividends as an expense of any kind or character.

Referring to that portion of said Thompson's affidavit relating to the merger of the various companies with appellant in the year 1917, and the value of the properties so merged, the true facts with respect thereto are set forth in R. C. Sharp's rebuttal affidavit, and need not be further noticed here.

Referring to that portion of said Thompson's affidavit in which it is stated that appellant had a net income during 1920 of 23% upon the value of its property, and that from appellant's sworn reports for the period from June 30, 1909, to June 30, 1920, the average net return on the fair physical value of the property was 20%, these affiants state that said statement is wholly untrue. In the first place, the Commission in its order 1886, upon the physical valuation of appellant's property, made by the Commission's own engineer, and also the physical valuation of said property made by other engineers, and after hearing evidence in regard to the value of said property during a period of almost 11 months, found the value of said property, including the production, transmission and distribution properties, to exceed the sum of \$18,000,000.00. In the year 1920 appellant's net earnings, by making no allowance for amortization or depreciation, were only \$1,460,748.02; whereas, had appellant earned 8% for interest or dividend upon the value of said property, and an additional 8% upon its production, and 5% upon its dis-

tribution property for amortization and depreciation, as suggested by the Commission in its said order 1886, and as suggested by defendants in their answer herein, appellant would have earned, during said year, over and above its expenses, a sum in excess of \$2,900,000.00.

C. S. THOMPSON.

(Tr. 378-381.)

C. S. Thompson, on February 27, 1922, made an affidavit in reply which was filed by the defendants and which is in substance as follows:

Referring to that portion of rebuttal affidavit of R. C. Sharp and J. E. Dalious, affiant says that the accounts relating to changes in construction, repairs to wells or leases, repairs to lines or buildings, surrendered leases and abandoned wells and lines, are not being properly carried in appellant's capital account. For example, appellant's accounts covering new lines into new fields are and should be capital accounts. Affiant claims that in case used or second-hand pipe should be laid into the fields instead of new pipe the same provision as to charging this capital account should hold. The cost or the value of the pipe, charges for labor, cartage, etc., should be taken into consideration and carried as capital accounts in the cost of new lines. There should be provided by appellant a depreciation reserve account. To this account there should be charged yearly a certain amount for depreciation on the whole system, which in due course of time would wipe out all charges for the original labor and material.

As to surrendered leases there comes into consideration another element which affiant believes has not been definitely settled. This is the right of a public service corporation to include in its assets leases and land which it has for development purposes. This is especially true as to leases in undeveloped territory. Nothing in appellant's reports to the Commission discloses the fact that its surrendered leases are leases from which it originally obtained a supply of gas.

Affiant does not claim that appellant has a depreciation reserve fund. He does claim that it is justly due to its patrons and stockholders that it should have a depreciation reserve fund, and before dividends are paid such depreciation reserve fund should be set aside.

Affiant still maintains that the amount of working capital allowed appellant by the Commission is sufficient. The interest paid on borrowed money for the purpose of operating is not a proper charge to the expense account.

Affiant states that the matters and facts set forth in his original affidavit were and are true and correct.

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# In the Supreme Court of the United States

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OCTOBER TERM, 1922  
No. 406.

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OKLAHOMA NATURAL GAS COMPANY,  
*Appellant,*

vs.

CAMPBELL RUSSELL ET AL.,  
*Appellees.*

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In Error to the District Court of the United States for the  
Western District of Oklahoma.

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## BRIEF AND PRINTED ARGUMENT FOR APPELLANT.

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### STATEMENT OF CASE.

Appellant is a public utility engaged in the production, purchase, transportation, distribution and sale of natural gas in Oklahoma for light, fuel and power purposes.

On June 25, 1921, the Corporation Commission of Oklahoma, by its order 1886, effective July 1, 1921, prescribed certain rates hereinafter mentioned at which appellant should sell its gas (Pr. Tr. 71).

Finding these rates unreasonable and confiscatory, appellant took a legislative appeal from the Commission to the Supreme Court of Oklahoma; and it applied to that court for a supersedeas suspending the enforcement of said rates and permitting appellant to charge higher and reasonable rates pending the determination of said appeal. The supersedeas was denied. Said appeal is still pending and undetermined.

Appellant operated under said rates from July 1, 1921, to December 16, 1921, and during said time suffered an actual out-of-pocket deficit in excess of \$93,000, without charging as expense anything for amortization or depreciation (Pr. Tr. 370).

On December 12, 1921, appellant filed its bill in equity in the District Court of the United States for the Western District of Oklahoma against the Corporation Commission and its members, the Attorney General of the State, and certain cities and their city attorneys, seeking a temporary injunction against the enforcement of the prescribed rates pending the determination of its legislative appeal in the State Supreme Court; and praying leave, in the event the Supreme Court should affirm said rates, to file a supplemental bill for a permanent

injunction. The basis of the action was that the rates prescribed were confiscatory and therefore violative of the fourteenth amendment (Pr. Tr. 4).

On December 16, 1921, the United States Court granted a temporary restraining order against the enforcement of the prescribed rates, providing however, that under it appellant should charge not more than 10c per M in excess of the prescribed city gate rate hereinafter mentioned, and not more than 20c in excess of the prescribed distribution rates (Pr. Tr. 105). This order was extended until the decision upon the application for a temporary injunction.

The application for the temporary injunction was heard on February 27, 1922, before the Honorable Kimbrough Stone, Circuit Judge, and the Honorable John C. Pollock and John H. Cotteral, District Judges. On April 27, 1922, the court, Judge Pollock dissenting, denied the temporary injunction (Pr. Tr. 381 and 382). From that order this appeal has been taken.

Briefly stated, the following are some of the most pertinent facts:

Appellant's public utility property is divided into two general classes: first, its production and

transmission property; and second, its distributing property.

Its production and transmission property consists of its gas leases and wells and the equipment thereon, gas gathering lines, transmission lines, compressor stations, regulator stations and rights of way. In short, it includes everything used and useful in obtaining the gas and carrying it to the boundaries of the towns and cities served.

Its distribution property consists of its gas distributing systems through which it distributes natural gas to the public in some thirty towns and cities in Oklahoma in which it owns natural gas franchises.

Appellant both produces and purchases natural gas in the gas fields. It purchases all the gas for sale available to its pipe lines and gathering lines, but the quantity purchasable is not sufficient to supply the demands of its patrons. Neither is the quantity which it can produce sufficient to supply its patrons. To fill its requirements during the winter time requires the aggregate of all the gas appellant can both purchase and produce; and even then, in periods of extreme cold weather, acute shortages occur (Pr. Tr. 339-340).

With its production and transmission property appellant produces, purchases, transports and delivers the gas into its distributing systems for distribution and sale to the public. With that same production and transmission property appellant also transports and delivers gas to certain local independent distributing companies which own franchises in and serve towns and cities in which appellant itself does not distribute gas, to wit: Commonwealth Public Service Company at Wagoner; Muskogee Gas & Electric Company at Muskogee; Midfield Gas Company at Oilton; Shawnee Gas & Electric Company at Shawnee; Guthrie Gas, Light, Fuel & Improvement Company at Guthrie; Southwest Gas & Fuel Company at Duncan and Marlow; and Oklahoma Gas & Electric Company at Oklahoma City, Enid, El Reno, Yukon and Britton; all in Oklahoma (Pr. Tr. 82).

Prior to July 1, 1921, appellant supplied the above-named independent distributing companies under what were known as divisional contracts, whereby it received for the gas furnished two-thirds of the collections made by the independent distributing companies for the gas by them sold for domestic purposes, and three-fourths of the collections made for the gas by them sold for industrial purposes.

Prior to April 1, 1920, the rates for gas in all the towns and cities obtaining their gas from appellant, including both those in which appellant owned the distributing plants and those in which the distributing plants were owned by independent companies, were:

First 100 M cubic feet per month, 40c per M net,  
Next 400 M cubic feet per month, 32c per M net,  
All over 500 M cubic feet per mo., 25 per M. net.

During the effectiveness of those rates appellant was paying only 6c per M at the mouth of the wells for all the gas which it purchased, and the said rates were purported to be based upon appellant's being required to pay that sum for the gas purchased; but the quantity available was not sufficient to supply adequately the needs and demands of appellant's patrons.

In March, 1920, appellant found an opportunity to purchase some additional gas amounting to about 20 million cubic feet per day provided it would pay therefor 10c per M measured at the wells. To enable appellant to procure this additional gas and to pay the increased price therefor, the Commission, upon the recommendation of the Citizens Gas Committee of Oklahoma City, considering appellant's division of the proceeds with the independent com-

panies, the leakage, and some additional investment necessary to reach the gas, increased the rates to the following schedule:

First 100 M cubic feet per month, 48c per M net,  
Next 400 M cubic feet per month, 40c per M net,  
All over 500 M cubic feet per mo., 33c per M net.

There having been insistent complaint by appellant, however, that all its rates were grossly inadequate, and that even this increased rate was so, and the Commission having been informed that appellant intended soon to file an application for a general increase in all its rates, the Commission made the foregoing rates temporary only, and to be effective only until October 1, 1920, or until the further order of the Commission.

Both appellant and the Commission having caused inventories and appraisals of appellant's property to be made, on August 5, 1920, appellant filed its application for a general increase in its rates, and in addition for the fixing of a reasonable flat price at the town borders or city gates at which it should furnish gas to the local independent distributing companies in the place of the arrangement existing under the so-called divisional contracts.

Claremore, Inola and Ramona, which were not

on appellant's main system, were eliminated from the hearing on their application, and ordered heard separately.

The Oklahoma Gas & Electric Company, an independent distributing company serving Oklahoma City, Enid, El Reno, Yukon and Britton, and the Muskogee Gas & Electric Company, serving Muskogee, both of which procured their gas from appellant, filed an application in the Supreme Court of Oklahoma for a writ of prohibition to prohibit the Commission from proceeding with the cause, on the ground that it had no power or jurisdiction to disturb the divisional contracts.

The application was not determined in the Supreme Court until January, 1921, when it was denied. No temporary writ having been granted by the Supreme Court, the Commission proceeded with the hearing, but made no order respecting the establishment of a city gate rate because its power to do so had not been determined. On December 20, 1920, however, the Commission made a temporary order fixing the following rates in all the towns and cities served by appellant, both directly and indirectly, to wit:

First 100 M cubic feet per month, 58c per M net,  
Next 400 M cubic feet per month, 50c per M net,  
All over 500 M cubic feet per mo., 40c per M net.

It was provided in said order that the same should be temporary and effective only until March 31, 1921, and pending the final determination of said writ of prohibition in the Supreme Court; that the increase in rates therein made should not be shared by the independent distributing companies, but that the excess earned by said rates over those theretofore in effect should be paid to appellant, and should constitute a fund for the amortization of appellant's properties in the exhausted gas fields and for the laying of new pipe lines to new fields.

This order never became effective. In January, 1921, the Supreme Court of Oklahoma, upon application of certain towns and cities affected, issued a writ of prohibition against the Commission and appellant, prohibiting the enforcement of that order, on the following grounds: First, that the order was void because the rates were prescribed without the Commission's having determined the value of appellant's property; though that court had previously held, and after holding this order void it soon again held, that the Commission had power to fix temporary rates without a valuation. Second,

that the Commission had no power to increase the rates for appellant's benefit in the towns and cities in which appellant did not own franchises, though such towns and cities were dependent on appellant as a public utility for gas; and it held that this invalidated the order even in the thirty towns and cities in which appellant did own the franchises. Third, that the Commission had no power to increase the rates in order to create a fund with which appellant might build new pipe lines to new fields, or for the amortization of the same.

At the same time the Supreme Court held this order void it denied the application of the Oklahoma Gas & Electric Company for a writ of prohibition against the Commission's abrogation of the divisional contracts.

This left the Commission free to proceed to a final determination of appellant's application for increased rates and for the fixing of reasonable city gate rates. Before the Commission did so, however, it directed from the bench that the 48c rate prescribed in its order of April, 1920, should no longer be charged, and that appellant's rates should revert to those theretofore in effect, and known as the 40c rate, notwithstanding the 48c rate was made to

enable appellant to pay 10c per M for a small portion of the gas it purchased, and notwithstanding on October 1, 1920, appellant was required to and did raise the price of all the gas it purchased to 10c per M.

On June 25, 1921, the Commission issued its final order, No. 1886, in which it established the city gate rate principle. In this order the Commission found the following facts:

1. Originally appellant could buy gas at the rate of \$100 for each gas well, and later at from  $2\frac{1}{2}$  to 3c per M. Since then the price of gas in the field has steadily advanced, until now appellant is required to pay 10c per M for all the gas it buys; and a short time ago the Empire Gas Company bid  $11\frac{1}{2}$ c per M for some gas which appellant had been getting, and by overbidding appellant took the gas away from it. As to the gas which appellant produces itself, the cost of production, including labor, drilling, casing and gathering lines, has more than doubled (Pr. Tr. 76).

2. In the transmission of gas, the cost of pipe lines and compressor stations has trebled, and the cost of labor entering into the laying of pipe lines

and the building of compressor stations has more than doubled (Pr. Tr. 76).

3. The gas fields from which appellant originally obtained its gas, and many new fields to which it has since built lines, have been exhausted. The result has been that appellant has been required ever since and including the year 1917 to expend large sums in laying many miles of new pipe lines and in erecting additional compressor stations in order to get and furnish gas at all, while the amount it has been able to get and sell has steadily decreased each year, from 29 billion feet in 1917 to 20 billion feet in 1920. Since and including the year 1917, appellant's additional investment in new lines and compressor stations has been about five and a quarter million dollars, which has approximately equalled its net earnings during that time, and not counting its new investment as an expense. As the fields become exhausted, the pipe lines into them, without having been amortized, become comparatively worthless except as junk, which entails the loss of the amount invested in them. This has impaired the efficiency of appellant's service, and is leading to and if continued will inevitably end in early bankruptcy (Pr. Tr. 77).

4. Appellant's production and transmission property will become practically worthless except for what it will bring as junk when the natural gas is exhausted. It is therefore necessary that appellant be allowed a return not only for interest or dividend upon the value of the property, but also for the purpose of amortizing this property against the time when the gas is exhausted (Pr. Tr. 77-8).

5. All the evidence before the Commission was to the effect that the original cost of appellant's production and transmission property was \$14,528,879.86. All the evidence was also to the effect that present reproduction cost of this same property would run from 70% to 100% more than the original cost. If appellant is denied the benefit of the appreciation on its property, it ought not to be charged with depreciation. All the evidence was to the effect that, considering the large amount of new construction in appellant's property, the average depreciation upon the whole is 18%, and the Commission will offset the depreciation by the appreciation, and fix the present value of appellant's production and transmission property, excluding Claremore, Ramona and Inola, at \$14,528,879.86 (Pr. Tr. 85-7).

6. Appellant's production and transmission

expenses, excluding Claremore, Inola and Ramona, upon the basis of its paying 10c per thousand at the mouth of the well for the gas it purchases, are \$3,955,059.15 per annum (Pr. Tr. 87-8).

7. All the evidence was to the effect that appellant's going-concern value was 15% of the value of its physical property. However, the Commission allows a going-concern value of only 10%, and, following its general rule, allows as a working capital appellant's expenses for one and one-half months. This would bring the total value of appellant's production and transmission property for rate-making purposes to \$16,476,150.24 (Pr. Tr. 89).

8. If we assume that because of the extraordinary risk and hazard of this business appellant is entitled to earn 10% for dividends or interest on the rate base, and 10% for depreciation and amortization together, then appellant's total earnings for interest or dividends, depreciation and amortization, and expenses, on its production and transmission property, exclusive of Claremore, Inola and Ramona, and exclusive of the sales of field gas and drilling gas, would have to be \$6,279,865.88 per year, and this would require a city gate rate of 42.1c per M for each and every M cubic feet of gas supplied to

each and every one of the distributing plants, both those owned by appellant, and those owned by the independent distributing companies (Pr. Tr. 88-90).

9. If appellant is allowed a return for interest or dividend of only 8%, and is allowed 10% to cover depreciation and amortization, to produce this would require a city gate rate of 40.5c per M for every M cubic feet of gas delivered into the distributing systems, both for industrial and for domestic use (Pr. Tr. 91).

10. If appellant is allowed a return of only 8% for interest or dividends, and only 8% for depreciation and amortization, the city gate rate necessary to produce it would be 38.3c per M for each M cubic feet of gas delivered into the distributing systems (Pr. Tr. 91-2).

11. If appellant's production and transmission property is charged with a depreciation of 18%, and a return of only 8% on the depreciated value is allowed for interest or dividends, and 8% for depreciation and amortization, then the city gate rate necessary to produce the same would be 35.2c per M for every M cubic feet of gas delivered into the distributing systems (Pr. Tr. 93).

12. The Commission hereby fixes the city gate

rate at 25c per M for domestic gas, and 20c per M for industrial gas, measured at the border or boundaries of each town and city; and it rules that all gas used by each patron or customer in excess of 500 M cubic feet per month shall be considered industrial gas (Pr. Tr. 96-7).

13. As to the rates in appellant's distribution plants, the Commission said (Pr. Tr. 97-99):

"The Commission finds that the cost of the properties used and useful in supplying gas in the towns and cities served directly by the Oklahoma Natural Gas Company at December 31, 1920, including reasonable allowances for amortization, engineering, supervision, interest during construction, legal expenses, accounting, casualties, incidentals and every conceivable intangible expense, going concern value and working capital, to be as follows:

Arcadia	\$ 5,753.45
Chandler	59,724.26
Coweta	30,196.26
Depew	9,461.60
Davenport	10,262.18
Deer Creek	4,242.11
Edmond	51,185.46
Haskell	44,858.58
Hunter	9,852.32
Kellyville	8,099.33
Lamont	15,067.97
Luther	6,827.30
Midlothian	2,371.25
Meeker	9,140.68
Nardin	4,812.84

Peckham -----	5,035.00
Pond Creek -----	20,808.28
Porter -----	12,513.36
Sapulpa -----	260,534.19
Shamrock -----	20,846.90
Stroud -----	32,585.42
Dawson -----	} 1,411.446.46
Red Fork -----	
Turley -----	
Tulsa -----	
Wellston -----	11,963.74

“The Commission further finds that in order to allow a rate of return of 8% and to create a fund for depreciation amounting to 5% and to enable the company to serve the public efficiently, it is necessary to establish the following schedule of rates:

	Domestic.	Industrial.
Arcadia -----	55c	25c
Chandler -----	55c	25c
Coweta -----	55c	25c
Depew -----	50c	25c
Davenport -----	55c	25c
Deer Creek -----	45c	25c
Edmond -----	50c	25c
Haskell -----	50c	25c
Hunter -----	50c	25c
Kellyville -----	50c	25c
Lamont -----	47c	25c
Luther -----	50c	25c
Midlothian -----	55c	25c
Meeker -----	45c	25c
Nardin -----	45c	25c
Peckham -----	55c	25c
Pond Creek -----	49c	25c
Porter -----	55c	25c
Sapulpa -----	47c	25c

Shamrock -----	45c	25c
Strond -----	55c	25c
Dawson -----	42c	25c
Red Fork -----	42c	25c
Turley -----	42c	25c
Tulsa -----	42c	25c
Wellston -----	52c	25c''

In said order 1886, made on June 25, 1921, and effective July 1, 1921, all the divisional contracts were abrogated; and for rate making purposes the Commission treated appellant's production and transmission property as though it were owned by one corporation, and each of its distributing plants as though it were owned by a separate corporation, and fixed a flat price at the town borders of each town and city served by appellant's production and transmission property, either directly or indirectly, at which appellant should sell the gas to all distributing plants, including both those owned by appellant and those owned by the independent distributing companies. Appellant makes no complaint of the abrogation of the divisional contracts, nor of separating the production and transmission property from the distributing properties; but it complains only of the rates fixed by the Commission at which appellant's production and transmission property should sell the gas to all the distributing plants at the town

borders, and also the distribution rates which the Commission fixed for appellant's own distributing systems. Prior to the making of that order there was no separation of appellant's production and transmission property on the one hand from the distribution property on the other; and the same rates for gas prevailed in each and every town and city which received its gas from appellant, including both those in which appellant owned the distributing systems, and those in which the distributing systems were owned by independent distributing companies.

#### **PERTINENT FACTS.**

The following facts were proved in the United States Court, and were not disputed:

1. The Commission took the depreciated original cost as the rate base, although it expressly found that existing values were much higher than original cost, and although the evidence showed that at the time of the filing and the trial of this case in the Federal Court reproduction cost was 30% greater than original cost.

2. The Commission excluded from consideration \$680,000.00 worth of property owned by appellant and necessary in the conduct of its public utility

business, even in arriving at the original cost of appellant's property.

3. The Commission found that a return of 8% for interest or dividend and 8% for depreciation and amortization on the depreciated original cost of appellant's production and transmission property, which is no more than is ordinarily allowed to stable utilities which operate without the risk and hazard attendant upon appellant's business, required a city gate rate of 35.2c for each and every M cubic feet of gas, both domestic and industrial, delivered to the distributing plants; and then, in the face of that finding, it fixed the city gate rate at 25c per M for domestic gas and 20c per M for industrial gas. In other words, "the facts found do not as a matter of law support the order made" (*Interstate Commerce Commission v. Louisville & N. R. R. Co.*, 227 U. S. 88), and the order is confiscatory and void on its face.

4. Actual operations under the Commission's order from July 1, 1921, to December 31, 1921, caused appellant a deficit of \$93,650.97; without charging to expense anything for amortization or depreciation (Pr. Tr. 370).

5. The order was a reduction in rates, although during the preceding calendar year of 1920, during most of which time appellant was getting a 48c rate and was paying only 6c per thousand for the gas purchased, appellant's net earnings had been only half what the Commission in its answer says it should earn. Three-fourths of the gas sold in appellant's own distributing systems is sold in the city of Tulsa, and the domestic rates fixed by this order in Tulsa, Red Fork, Turley and Dawson were only 42c per M as against the 48c which appellant had received during 1920, and as against the 58c per M which the Commission had prescribed in its order of December 20, 1920.

6. The application of the Commission's rates to the business done by appellant during the year from November 1, 1920, to October 31, 1921, would have produced to appellant a net return of only \$299,000.00 upon its production and transmission property, which the Commission found was of the value on the original cost basis of \$14,528,879.86, exclusive of going concern value and working capital.

7. The rates complained of applied to the entire business done by appellant during the calendar year 1921, including the distributing plants as well

as the production and transmission property, would have given appellant a net revenue of \$534,615.95, on the combined production, transmission and distribution property, which the Commission found had a value for rate-making purposes in excess of 18 million dollars.

8. The Commission found, and the evidence before the trial court showed, that there had been a progressive decline in the amount of gas appellant could sell ever since 1917.

9. The Commission found and the evidence before the trial court showed that every year since and including 1917 appellant had been required to expend more than were its net receipts in building new lines to new gas fields, not for the purpose of obtaining new or additional business, but solely for the purpose of being able to continue to serve a constantly diminishing quantity of gas to the same towns and cities it was already obligated to serve; and that these new gas fields became exhausted and appellant's investment in them comparatively worthless before appellant can get the investment back.

10. The evidence before the trial court showed without contradiction that, on account of the inade-

quacy of the rates, appellant, in order to continue to get and furnish gas, has had to borrow the necessary money on short time notes and upon the personal endorsement of its directors; and that, in addition to its funded indebtedness, it now owes \$1,650,000 of current indebtedness secured by the endorsement of its directors, which appellant had to borrow to pay for new lines and for operating expenses. These notes are due, and appellant is without means of meeting them. It has no money in its treasury.

11. The evidence showed that appellant had done in vain everything it could to get relief from the state authorities before it filed this suit in the Federal Court.

12. It requires from six months to two years for the Supreme Court of Oklahoma to decide appeals from the Corporation Commission, although said appeals are advanced on the docket.

In denying the injunction the trial court ignored all the foregoing facts. It refused altogether to consider or pass upon the merits of the case. It held, in effect, that it made no difference how unreasonable or confiscatory might be the rates prescribed or how disastrous their effect on appellant; that it was immaterial that the confiscatory rates were put into

effect on July 1, 1921, and ever since had been and are now being enforced under the penalty of a fine of \$500 for each and every violation thereof; that it was immaterial that the Supreme Court of Oklahoma had refused to suspend the enforcement of the Commission's order pending the determination of the legislative appeal therefrom, and to permit appellant by giving a bond to charge and collect reasonable rates pending the determination of said appeal. The trial court held that during the pendency of the legislative appeal in the Supreme Court of Oklahoma, however long that may be, appellant must submit without redress to the confiscation of its property, and only in the event the Supreme Court of Oklahoma affirms the Commission's order will it entertain the bill, although it could not and would not then give redress for the enforced losses suffered in the meantime.

The court placed its decision on the ground of comity, holding in effect that, under the rule of comity, a state may for an indeterminate period do that which the Fourteenth Amendment provides it shall not do at all. Its decision was predicated upon its interpretation of this court's opinion in *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210. It is respect-

fully submitted that the district court erroneously interpreted the Prentis case, and that it overlooked the vital distinctions between the facts in that case and those existing here, which make that case in fact an authority for and not against the granting of the injunction herein sought.

We shall discuss first the question whether there are any valid legal grounds for the court's refusal to entertain the bill at this time, and thereafter whether, under the facts, appellant is entitled to a temporary injunction.

### THE DISTINCTION BETWEEN THE PRENTIS CASE AND THE CASE AT BAR

The rule of comity applied in the Prentis case was not a tolerance of the violation by the State of the Federal Constitution at any time. When the railways brought their suits in the Federal court in that case no property of theirs had been taken by the Commission's order, and they could not say that if they followed the reasonable and valid course of procedure provided by Virginia's Constitution, any of their property would ever be taken. The rule of comity there applied merely required a recognition by the railways of the reasonable and orderly course of legislative procedure provided by the State Constitution, and the following of that course of procedure until the State began to take, or until it became certain that the State would try to take, the railways' property without due process of law. That stage had not been reached in the Prentis case. It had been reached in the case at bar.

The Corporation Commission of Virginia, like that of Oklahoma, has power to fix rates. In Virginia before an order fixing rates becomes effective, it must be published. The Constitution of Virginia, as does the Constitution of Oklahoma, gives utilities or carriers an appeal from the Commission's rate orders to the highest appellate court of the State, which court, in reviewing such orders, acts legislatively. In each State, upon the taking of the appeal, the Supreme Court is empowered to grant a super-seedeas, suspending the enforcement of the Commis-

sion's order pending the determination of the appeal, upon the utility's giving a bond to refund the excess collected in the event the order should be affirmed.

In the Prentis case the Virginia Commission had made an order fixing passenger rates, but had not published it. The order had not therefore become effective, and was not yet operating to deprive the railways of any property with or without due process of law. From that order the railways had the right under the Virginia constitution to an appeal to the Supreme Court of the State sitting as a superior legislative body, and to apply to that court for a supersedeas suspending the enforcement of the order pending the determination of the appeal. Had they pursued that remedy, presumably the supersedeas would have been granted, and the enforcement of the order would have been stayed during the pendency of the appeal, so that still no property of the railways would have been taken; and they could not justify their refusal to take the appeal and to apply for the supersedeas on the ground that they believed the latter would be denied.

The railways thus being deprived of no property in the meantime, upon the determination of the

appeal one or the other of two results would have followed: (a) The State Supreme Court would have reversed the Commission's order, in which event the order would never have become effective and would never have operated to deprive the railways of any property; or (b) it would have affirmed the order, either outright or as modified by the court, whereupon, as this court held, the railways immediately could have instituted suit in the Federal court, and have procured an injunction against the enforcement of the order if it was violative of the Federal Constitution, and against being required to refund the excess collected in the interim over the rates prescribed in the order. In either event, the railways could have kept the order from ever becoming operative without ignoring and effectually annulling Virginia's constitutional plan of rate making.

Virginia's constitutional plan was reasonable and valid. In itself it violated no provision of the Federal Constitution. If an unconstitutional deprivation of property should be attempted, it would be the result of wrongful or erroneous action on the part of the State officials in executing the provisions, and not because of the provisions themselves. And the railways could not refuse to follow this reason-

able and orderly course of procedure on the ground that they anticipated that the State officials would act wrongfully or erroneously. They could not assume that the State Supreme Court, the superior legislative body which had the ultimate determination whether the Commission's order should ever become a law, and if so, when, would violate the Fourteenth Amendment. Until the contrary had been demonstrated, the presumption would be that the State officials would act rightly. Therefore, until the railways had taken their appeals to this superior legislative body, and had applied for a supersedeas, and until the supersedeas had been denied, or if granted, then until affirmance of the order—in short, until the railways were required to put the confiscatory rate into effect whereby it was made “certain that the officials of the State would try to establish and enforce an unconstitutional rule,” comity, the deference and consideration due to the State and to its reasonable and carefully safeguarded method of rate-making, forbade interference by the Federal court. It was the duty of the railways to follow that procedure provided by the state through its various legislative steps, all of whose provisions constituted one harmonious whole; and comity forbade interference by the Federal

court until the State actually began taking or trying to take the railways' property without due process, until it was made "absolutely certain that the officials of the State would try to establish and enforce an unconstitutional rule."

But comity neither requires nor authorizes a tolerance of the deprivation of property without due process of law by a State at any time (*Wilcox v. Gas Co.*, 212 U. S. 19), and no more by a tentative order having the force and effect of a law for an indeterminate period than by a duly enacted statute. The very purpose of the amendment is to forbid such tolerance. If, therefore, the railways, in recognition of and in subordination to the reasonable and orderly course of procedure provided by the State constitution, had taken their appeals, and had applied to the Supreme Court for a suspension of the Commission's order while the appeals were being considered and determined, and if the Supreme Court had refused the supersedeas, whereby the order prescribing confiscatory rates had become immediately effective and enforceable, a different situation would have been presented. The Commission's order would have been a rule of action prescribed by the superior power in the State which the inferior,

insofar as the remedies provided by the State were concerned, would have been required to obey for an indeterminate period. It would have been as much a present enforceable law of the State as though it had been passed by both houses of the legislature and approved by the Governor. It would have been such a law of the State as to constitute a basis for the prosecution of the railways and the assessment of fines against them for its violation. The Supreme Court's denial of the supersedeas would have been for the time being an affirmance of the order. For the time being the legislative stage would have been passed, and the judicial stage would have been reached. If the legislative stage would not have been passed, then the railways would not have been required to obey the order, for no measure becomes a law until it has passed the legislative stage. If the judicial stage would not have been reached, then the order could not have been enforced, for it was to be enforced by the assessment of fines in judicial proceedings. It would then have been made "absolutely certain that the officials of the State would try to establish and enforce an unconstitutional rule" during an indeterminate period. At that stage, unless the Federal court could grant a tem-

porary injunction against the enforcement of the order pending the determination of the legislative appeal, the railways would have been without remedy, and would have been required to submit to the confiscation of their property. Applicable to such a situation, this court said in that case: "It seems clear to us that appellees were not bound to wait for proceedings brought *to enforce the rate* and to punish them for departing from it." What does "*enforce*" mean? It means to cause to be put in force or into effect. This court held, therefore, that if the railways should pursue the legislative remedies provided by the State as far as possible in an endeavor to prevent the rates from becoming effective, and notwithstanding that the Commission's order reached such a stage as to become a present enforceable law, then the railways were not bound to wait for proceedings brought to compel them to obey it and to punish them if they would not do so, but that they might then go into the Federal court to enjoin such action on the part of the State officials.

The railways, however, pursued none of the legislative remedies the State had provided. They took no appeal at all, and never intended to take any.

They ignored the valid provisions of the Virginia constitution, and the reasonable and orderly course of procedure they outlined. And they filed their suits in the Federal court before the Commission's order had even been published, to enjoin its publication and enforcement. Having taken no appeal, they of course applied for no supersedeas, as was done in the case at bar. They were not seeking a mere temporary injunction in the Federal court enjoining the confiscation of their property pending the determination of an appeal to the State Supreme Court, as in the case at bar; *but they sought and obtained a permanent injunction, permanently enjoining the enforcement of the Commission's order. The decrees in that case were final decrees.*

The proceedings in the Federal court in that case, therefore, were not in recognition of and subordination to the constitutional plan of rate-making provided by the State. They were not filed merely for the purpose of preserving the railways' rights under the Federal Constitution while the course of procedure outlined by the State was being followed. But they were in hostility to and in derogation of the constitutional plan provided by the State. Had the final decrees rendered by the Federal court in that

case been affirmed by this court under the circumstances there existing, Virginia's constitutional provisions and the orderly course of procedure they prescribed would have been effectually annulled, and in every such case thereafter the utilities would have ignored them and the Supreme Court of Virginia, and upon the making of every order deemed confiscatory, would have gone directly into the Federal court for a permanent injunction. That was the condition that called forth the rule of comity announced by this court.

In the case at bar the facts are wholly different. The rates for gas prescribed by the Commission were actually in effect, and had been in effect since July 1, 1921. Appellant duly took its legislative appeal to the Supreme Court of Oklahoma, which is still pending and undetermined. It applied to the Supreme Court for a supersedeas suspending the enforcement of the prescribed rates during the pendency of the appeal, and permitting it to charge and collect reasonable rates, upon its giving an approved bond to refund the excess with interest if the rates ordered, or any rates less than those charged, should be held valid. The application was denied.

The rate order was confiscatory on its face.

Actual operations under it from July 1, 1921, to December 12, 1921, had proved the rates confiscatory in fact. Also, those rates applied to the business done during the preceding year showed them to be confiscatory in fact. Appellant's business is an unstable and wasting business. Though appellant has done a steadily decreasing business since 1917, it has been required to put more into new lines to new gas fields each year and in paying its expenses than its earnings have been. The business has not carried itself. Appellant's stockholders have carried it. In addition to its funded indebtedness, appellant had \$1,660,000 of current indebtedness nearly due, on which its directors were indorsers, which had been expended in an endeavor to furnish the people with gas. It was operating at a deficit and had no means of paying this money. Its financial situation was desperate. As compared with artificial gas, natural gas is worth intrinsically \$2.50 per thousand. Appellant's rates are far below those of the other gas companies with which appellant must compete in getting its gas.

Under those circumstances what was appellant to do? The Commission's order being a present enforceable law, and the Supreme Court having re-

refused to suspend it; not only had it been made "absolutely certain that the officials of the state would try to establish and enforce an unconstitutional rule," but they had actually established it and were actually enforcing it. Nothing but a receivership was in sight for appellant; not a receivership caused by an investment originally injudiciously made, by bad management, or by sudden economic changes, but a receivership directly caused by the establishment and enforcement of confiscatory rates for the service, of rates much less than those prevailing among appellant's competitors.

The question is, does comity require that appellant suffer the confiscation of its property while the Supreme Court of Oklahoma is considering its appeal? The majority of the judges in the trial court interpreted the Prentis case to so hold. It is submitted that in doing so they erred.

The matter complained of in the Federal court in the Prentis case was the fact that the Corporation Commission of Virginia had made the order in question, not that it was being enforced. It was within the power of the railways to cause other legislative steps to be taken by officials of the state, in conformity to the State Constitution, which might have

kept the order from ever being enforced. The railway companies omitted to take those steps, ignoring all the legislative remedies provided it by the state. In the case at bar not only had the Commission promulgated the order, but the appellant had pursued in vain all the remedies provided it by the State. What the appellant was complaining of here was not, as in the Prentis case, that the Commission had made an order, but it was also that the Supreme Court had refused to suspend it, that the order had actually been put into effect, and that appellant's property was actually being confiscated. The legislative stage had been passed when the rates prescribed became enforceable against appellant. Whatever changes may be made in this order in the future, it is now, and since July 1, 1921, has been, as much a law of the State as if it had been passed by both houses of the legislature and approved by the Governor. Every time appellant charges a patron more than the rates prescribed, the Commission may fine it \$500. The order is a rule of conduct prescribed by a superior power in the State which appellant is being coerced to obey. The order passed the legislative stage when it became necessary for appellant to obey it. It reached the judicial stage when, for each and every violation of it, appellant

became subject to a fine of \$500. The situation, therefore, is that appellant, under penalty of enormous fines, is required to obey an unconstitutional and confiscatory order for an indefinite period of time. It may be reduced to a state of bankruptcy and its property put into the hands of a receiver before the order is ever passed upon by the Supreme Court of the State.

One distinction therefore between the Prentis case and the one at bar is the fact that in the former the railways were complaining merely because the Commission had made an order which had not yet become effective, and which, had the railways pursued the legislative remedies provided by the Constitution of the State, might never become effective. Here, appellant complains of an order which had been in effect six months when the action was brought, and which was actually confiscating appellant's property, and which the Supreme Court refused to suspend.

Another distinction between the Prentis case and the one at bar is that the proceeding in the Federal court in the Prentis case was in hostility to and in derogation of the legislative procedure provided by the Constitution of Virginia. The railway com-

panies did not pursue the remedies prescribed by the State; they did not ask the Supreme Court of the State to suspend the order pending its consideration of it legislatively, and upon the determination of the appeal to reverse it. The railways did not go into the Federal court to protect their property from confiscation pending the decision of the appeal by the Supreme Court of the State. But there the railway companies, apparently contemptuous of the State and the machinery which it had provided for rate making purposes, filed their suit in the Federal court before the Commission had ever published the order, at a time when the order was not injuring them, and without being able to say that if they pursued the remedies provided by the State, the order would ever injure them. The injunction they sought was not a mere temporary injunction, protecting their property from confiscation until the Supreme Court should pass upon the Commission's order; but it was a final, permanent injunction which precluded the Supreme Court from ever passing on the Commission's order. That violated the rule of comity.

Here, the proceeding in the Federal court is in recognition of and in subordination to the procedure

provided by the Constitution and laws of Oklahoma. Appellant has not ignored the Supreme Court as a part of the rate making body of the State. It has taken its appeal from the Commission to the Supreme Court, has briefed and argued that appeal, has submitted it, and some day a decision will be rendered therein. Also, in recognition of and in conformity with the State procedure, in order to prevent the confiscation of its property while the appeal is pending, it applied to the Supreme Court for a stay of the enforcement of the prescribed rates, which was denied. Appellant has therefore followed the remedies provided by the State as far it can go. It had done so before it instituted this suit. Insofar as preventing the confiscation of its property is concerned, it has followed them in vain. Its property has been and is now being confiscated. Its suit in the Federal court was for a temporary injunction enjoining the confiscation of its property while the appeal is pending, leaving the Supreme Court of Oklahoma free to decide the appeal, but praying leave in the Federal court, in the event the Commission's order should be affirmed, to file a supplemental bill for a permanent injunction.

The Prentis case presented no such questions.

The principal opinion in that case, by Justice Holmes, is based upon the assumption that if the railways followed the procedure prescribed by the Constitution of Virginia, the confiscatory rates would not be put into effect until they were affirmed by the Supreme Court of Virginia, and that immediately upon that happening the railways could bring their suit in the Federal court. That is shown by the statement in the opinion that before they resorted to the Circuit Court the railways should "have taken the appeal allowed them by the Virginia Constitution at the *legislative stage*, so as to make it absolutely certain that the officials of the State would try to establish and enforce an unconstitutional rule." When this court said that the railways should have taken the appeal at the legislative stage, by the expression "*legislative stage*" it meant while the order was in the course of becoming a law. When it has become a law, enforceable and enforced, the legislative stage has been passed, whether the legislative appeal in the Supreme Court has been determined or not. When the order has been put into effect and is being enforced against a company under the penalty of enormous fines, there is no longer any question whether the State will try to establish and enforce an unconstitu-

tional rule. The rule is established and is actually being enforced.

This court further said in that opinion that, "It seems to us clear that the appellees were not bound to wait for proceedings brought *to enforce the rate* and to punish them for departing from it." According to the decision of the majority of the judges in the trial court, the appellant here is bound to conform to the rate for an indeterminate period, whether it is confiscatory or not. It must submit to let the rate be enforced; that is to say, it must put the rate in effect, or submit to enormous cumulative fines for not doing so. This court, however, said that the railways were not bound to let the rate be enforced, that they did not have to wait for proceedings brought to enforce the rate and to punish them for departing from it. That shows that this court assumed that if the railways followed the procedure provided by the Constitution of the State, the rates would not be put into effect until they had been finally affirmed by the Supreme Court of the State, an adequate bond given to insure refunds in case the rates were found valid protecting the public in the meantime.

In that opinion this court further said that the

question to be decided by the Supreme Court of the State is legislative, "whether a certain rule *shall* be made"; but here the rule has been made. This court further said that it would hesitate to say that a right to resort to the courts could be made always to depend upon keeping a previous watch upon those bodies that make laws, and using every effort and all the machinery available to prevent unconstitutional laws from being passed. This further shows that this court assumed that if the railways used every effort and all the machinery provided by the State Constitution, it could prevent the confiscatory rates from being put into effect until the Supreme Court had finally confirmed them. This court nowhere intimated that if a public utility makes every effort and uses all the machinery available under the State laws to prevent confiscatory rates from being put into effect, and does so in vain, it must then submit to the confiscation of its property for an indeterminate period, while the Supreme Court of the State is considering its legislative appeal.

Further on this court said that its decision did not go upon a denial of power to entertain the bills at the existing stage, but upon its view "as to what

was the most proper and orderly course in cases of this sort, *when practicable*." What was meant by the qualification, "when practicable?" Did it not mean that if the railways could take their appeal and procure a suspension of the order during the pendency thereof, then it was practicable for them to do so? Did it not mean that the effect of the confiscatory rates upon the railway company, whether the injury was slight or great, was to be considered? Yet in the case at bar the trial court gave no consideration to the facts whatsoever. It did not consider whether it was practicable to await the determination of the appeal. It gave no consideration to the desperate financial condition in which appellant has been placed by the confiscatory rates. It held that under any and all circumstances, as a matter of law, the public utility must conform to the confiscatory rates until the Supreme Court finally passes upon the order of the Commission, even though it fixed the rate at 10c per M or 1c per M.

The decision in the Prentis case must be restricted in its application to "the particular facts" existing in that case. That was stated by this court itself, and has been shown by all the decisions we have been able to find which have considered that case in connection with facts such as exist here.

Thus, in *Atchison, T. & S. F. Ry. Co. et al. v. Love et al.*, 174 Fed. 59, the case arose under the same constitutional provisions of the State of Oklahoma and was against the Corporation Commission of the State. The essential facts were exactly like those in the case at bar. Circuit Judge Hook said in the first syllabus:

“A railroad company, which has appealed from an order of the Corporation Commission of Oklahoma fixing freight rates to the Supreme Court of the State, as permitted by the State Constitution, but was denied leave to give bond to suspend the operation of the order pending the appeal, thus leaving the order of the Commission in force, may invoke the jurisdiction of a Federal court to enjoin the enforcement of such order, where it is alleged that the rates fixed thereby are confiscatory and in violation of the Constitution of the United States.”

In that case, the *Prentis* case was relied upon by the Commission as showing that the action was premature; but Judge Hook stated that there were marked differences between the *Prentis* case and the one at bar, and that in fact the inferences from the opinion in that case would seem to require the Federal court to proceed with the exercise of its jurisdiction in cases such as the one at bar. In the opinion Judge Hook said:

“The result is that, though appeals have been

taken and are pending, the various orders complained of are still in force, and complainants must either obey them or take the chance of the penalties for disobedience. Even if the rates complained of may be said to be still in process of formation, yet, if they are confiscatory, as alleged, an injury to complainants is being inflicted as fully and irreparably as though by a completed legislative act or order. It is none the less violative of their rights under the Constitution that the injury arises from an enforced compliance with a tentative or uncompleted rule. The doctrine of the Virginia cases rests on considerations of orderly procedure in equity and a due regard for the governmental departments of the states; but it did not appear in that case, as here, that the rates first promulgated were being enforced, and that the railroad companies could not obtain a suspension of them pending the appeals which the court said should have been taken. The difference between the cases is a vital one."

After overruling the defendants' pleas, the cause again came on to be heard upon the application of the railway companies for a temporary injunction, and the opinion thereon by Judge Hook is reported in 177 Fed. 493. There the defendants demurred to the application for the temporary injunction, again resting their contention upon the Prentis case. In passing on the demurrers Judge Hook said, on page 502:

"The demurrers: It is argued that the

freight and passenger rates are still in legislative process, and therefore within the doctrine of *Prentis v. Atlantic Coast Line*, 211 U. S. 210, not properly the subject of judicial consideration. Both phases of this contention have already been considered in connection with the pleas (174 Fed. 59). It is the law of the land that a state may not confine to its own courts a citizen who claims his rights under the Constitution of the United States have been denied. And the Supreme Court did not hold in the *Prentis* case that a similar result could be accomplished by prescribing and enforcing under penalties a legislative rule, even though tentative, and restricting the remedy of the citizen to subsequent legislative inquiry and action."

And the court granted the temporary injunctions. Thereupon the Commission appealed to the Circuit Court of Appeals for the Eighth Circuit, and the appeal was heard by Sanborn and Adams, Circuit Judges, and Munger, District Judge, the opinion being by Judge Sanborn (*Love v. Atchison, T. & S. F. Ry. Co.*, 185 Fed. 321). In the first syllabus by the court it is said:

"Railroad companies, that have been, are, or will be deprived of parts of their property devoted to the public use of transportation without just compensation during the continuance of the rate-making process by provisions of a state constitution or of a state law or by order of a state commission, prescribing tentative rates and putting them in effect during the rate-making process under severe penalties, may

maintain suits for and obtain relief by injunction during the continuance of the rate-making process to the same extent that they may after the process is complete.

“It is as much a violation of the fourteenth amendment to the Constitution to take the property of a railroad company without just compensation during the process of rate-making as it is after the completion of that process.”

In the opinion the court said:

“Counsel for the appellants first invoke the decision of the Supreme Court in *Prentis v. Atlantic Coast Line*, 211 U. S. 210, and insist that these suits were prematurely brought. In that case the State Corporation Commission of Virginia made an order prescribing a maximum passenger rate of two cents per mile in that state. The Constitution of Virginia gave to the railroad companies an appeal from this order to the Supreme Court of Appeals of that state, and gave power to that court to supersede the order during the pendency of the appeal. The railroad companies took no appeal, but refused to obey the order, commenced suits in the Federal court, and obtained injunctions against its enforcement. The Supreme Court of the United States did not deny the jurisdiction of the United States Circuit Court, or its power to issue the injunctions, but held that the function of the Supreme Court of Appeals of Virginia on the appeal from the order of the Commission was legislative, and that, as the legislative process of fixing the rate was not complete until an appeal had been taken and had been determined, or until the time to take it had expired,

the more courteous and orderly course of procedure would be for the companies to pursue their appeal to the Supreme Court of Appeals of Virginia before they sought relief from the national court. But the Supreme Court of the United States added:

“ ‘It seems to us that the bill should be retained for the present to await the result of the appeals, if the companies see fit to take them. If the appeals are dismissed, as brought too late, the companies will be entitled to decrees. If they are entertained, and the orders of the Commission affirmed, the bills may be dismissed without prejudice, and filed again.’ ”

“The companies had not put the prescribed fare into effect in that case. The officers of the state had been restrained from compelling them to do so, and from imposing the penalties provided for their failure so to do, by the injunctions of the federal court. The Virginia appellate court was empowered to grant upon the taking of an appeal, and the Supreme Court might well presume that it would grant, a supersedeas from the order of the Commission pending the appeal, so that the fare prescribed in that case had not gone into effect, and probably would not go into operation until the Supreme Court of Appeals of Virginia should decide the issues to be presented by the appeals to it, and the opportunity subsequently should be given to the railroad companies to apply to the federal court in equity for relief. The effect of the decision in that case, therefore, was that where the reduced fares or rates prescribed had not taken effect, and probably would not take effect until a state appellate court could, on appeal

from the order of the Commission, perform its legislative function of finally fixing them, it was proper that the railroad companies should take the appeals, and delay their applications to the federal court for relief until the legislative issues presented by those appeals were decided, or it became reasonably certain in some other way, as by the dismissal of the appeals, *that the prescribed fares or rates would be put into operation.*

“The records before us present no such case.  
\* \* \*

“The Corporation Commission, at different dates during the years 1908 and 1909, made orders by which it prescribed maximum rates in Oklahoma on the average about 40 per cent. below the former rates on coal, lumber, petroleum, and petroleum products, grain and grain products, cement and other building materials, vegetables and canned goods, cotton and cotton seed, and numerous other articles, and the companies promptly put these rates into effect on the respective effective dates of the orders, and maintained them until they were relieved by the injunctions in the early part of 1910. The Constitution of Oklahoma empowers the Railroad Commission to fix and enforce reasonable and just rates for the transportation of freight (art. 9, sec. 18), provides that any corporation that fails to obey any valid order of the Commission within a reasonable time may be fined by the Commission such sum, not exceeding \$500, as it may deem proper for each day's failure so to do (section 19), that any corporation whose rates are affected by any order of the Commission may appeal therefrom to the Supreme

Court of the state (section 20), and that, upon the granting of an appeal, a writ of supersedeas may be awarded by that court, suspending the operation of the order appealed from until the final disposition of the appeal, upon the filing of a suspension bond approved by the Commission, or, on appeal from the Commission, by the Supreme Court.

“The railroad companies in the early part of 1909 appealed from the various orders of the Commission, and applied to the Supreme Court to supersede them and to suspend their operation during the pendency of the appeals, but their applications were denied. They requested the Corporation Commission to certify to the Supreme Court of Oklahoma for review the records relating to the orders, and to fix the terms and amounts of suspension bonds to be executed by them, and the Commission refused their requests. The Supreme Court issued writs of mandamus commanding the Commission to send up the records, but it persisted in its refusal to suspend the operation of or to supersede the orders of the Commission. After the reduced fare and the rates here in question had been tested by the companies by their actual operation for many months, and in the autumn of 1909, they exhibited their bills in these cases in the United States Circuit Court below, and prayed that the members of the Commission and the Attorney General might be prohibited from enforcing the section of the Constitution and the orders which prescribed them, because, as they alleged, the necessary effect of their operation was to deprive the companies of fair returns upon the values of their property in Oklahoma devoted to the public use of trans-

portation, and to take their properties without just compensation, in violation of the fourteenth amendment to the Constitution. These allegations must be taken to be true in the determination of these preliminary questions, and when these injunctions were issued the bills presented this state of facts:

“The officers of the State of Oklahoma were enforcing a state constitutional provision which had finally fixed a confiscatory passenger rate that had been in operation two years, and orders prescribing proposed future confiscatory freight rates which were not finally fixed by the Supreme Court of that State, were and had been in actual operation for many months under the penalty of drastic fines for a failure to maintain them. The Commission and the Supreme Court had refused to supersede the orders or to suspend their operation pending the appeals from them. The provision fixing the maximum fare and these orders for many months had been and were continually taking, and, unless their enforcement was stayed, would continue to take, the properties of the companies without just compensation. The Supreme Court had held in *Prentiss v. Atlantic Coast Line*, 211 U. S. 210, 29 Sup. Ct. 67, 53 L. ed. 150, that where future proposed rates were made, but were not and probably would not be in operation until after allowable appeals from the order prescribing them could be taken and decided by the Supreme Court of Appeals of Virginia in the exercise of its legislative function of rate-making, the more courteous course was for the companies affected to take the appeals and delay their applications to the federal courts for relief until those appeals

were decided or the rate-making process was otherwise concluded. But it never had held that citizens whose property had been and was being continually taken without just compensation, by the putting and maintaining in force under severe penalties of tentative confiscatory rates during the continuous process of rate-making, were thereby deprived of immediate and plenary relief in the national courts from such a patent violation of the fourteenth amendment to the Constitution. Such a holding would render citizens remediless in the federal courts for such a disregard of the Constitution as long as the process of rate-making should be continued, and that process might be continued indefinitely, nay forever.

“The legislative function in rate-making looks to the future and determines what future rates shall be. But when rates, either tentative or final, have been put and are maintained in actual operation under penalty of severe fines, the question whether or not their effect is to take the property of the railroad companies affected thereby without just compensation is a judicial one, conditioned by past or present facts, and the national courts cannot be deprived of jurisdiction of it by the fact that the process of making the tentative rates is yet incomplete. It is as clear a violation of the Constitution, and one as promptly remediable in the national courts, to take the property of a railroad company without just compensation by the enforced operation of tentative rates during the process of their making as by the operation of final rates after the process is complete. Railroad companies that have been, are, or will be deprived of parts of their property devoted to the public

use of transportation without just compensation during the continuance of the rate-making process by provisions of a state Constitution, or of a state law, or by orders of a state commission, prescribing tentative rates and putting them in effect during the rate-making process under severe penalties, may maintain suits for and obtain relief by injunction during the continuance of the rate-making process to the same extent that they may after the process is completed. These suits were not prematurely brought."

The foregoing opinions by Judge Hook in the Circuit Court and by Judge Sanborn in the Circuit Court of Appeals make very clear the distinction between the Prentis case and the one at bar. The facts with respect to the railway companies in those cases are exactly the facts with respect to the appellant in this case.

And this court itself approved the foregoing decisions. The Commission and the State of Oklahoma through its Attorney General applied to this court for a writ of certiorari to the Circuit Court of Appeals in that case, and the writ was denied. *Charles West, Attorney General, etc., et al., v. The Atchison, T. & S. F. Ry. Co. et al.*, 220 U. S. 618. Certainly that denial of the writ indicated this court's approval of the conclusions reached in the opinions by Judge Hook and Judge Sanborn, otherwise it would have

been this court's duty under its custom and practice to grant the writ. We say this because there was present in that case every element which this court considers in determining whether to grant a writ of certiorari, except probable error in the decision sought to be reviewed. In the first place the case was one of great public importance. High public officials of a sovereign state, invested with its legislative and administrative powers, and representing the public, were parties on the one hand. On the other were all the large transportation companies in the State. The sums involved were enormous. The questions involved were the power of a sovereign State and the constitutional rights of the railroad companies. So that every consideration, the amount involved, the public nature and character of the parties, the matter of general public interest, and the important constitutional questions, would have impelled the granting of the writ if the decisions sought to be reviewed were deemed erroneous. Certainly this court would not have denied the writ of certiorari, and thereby have permitted the Corporation Commission in behalf of the State to be enjoined from enforcing its rate orders, if the court had considered that the injunction had been issued in violation of the principles held in the

Prentis case to be controlling. Comity, so stressed by the trial court in this case, would have prevented.

In *Northwestern Bell Telephone Co. v. Hilton*, 274 Fed. 384, the Railroad and Warehouse Commission of Minnesota for some time had been conducting a proceeding looking to the fixing of reasonable permanent rates for the Telephone Company. Before that proceeding was concluded, the Telephone Company filed an application with the Commission for temporary increased rates pending the conclusion of the proceeding and the fixing of permanent rates. The application for increased temporary rates was denied; whereupon, before the determination by the Commission as to what the permanent rates should be, the Telephone Company filed its bill in the Federal court to enjoin the Commission from enforcing the existing rates. Judge Booth granted a temporary restraining order; and upon the hearing for a temporary injunction before Sanborn, Circuit Judge, and Morris and Booth, District Judges, the temporary injunction was granted. It seems to us that the principle applied in that case is applicable here. Upon principle there was as much requirement that the Telephone Company should continue to operate under the existing con-

fiscatory rates until the Commission should fix the permanent rates, as there is that appellant should continue to operate under the confiscatory rates until the Supreme Court of Oklahoma shall fix permanent rates.

*Chicago Railways Co. v. Illinois Commerce Commission*, 277 Fed. 970, by the District Court for the Northern District of Illinois, was heard before Evans and Page, Circuit Judges, and Carpenter, District Judge, for a temporary injunction enjoining the Illinois Commerce Commission from enforcing the rates of fare prescribed by it to be charged by the Chicago Railways Company. In the opinion the court said:

“The defendants urge *Prentis v. Atlantic Coast Line*, 211 U. S. 210, as defeating the jurisdiction of this court, because the record does not disclose that the plaintiffs have applied for the rehearing provided for in section 67 of the Public Utilities Act.

“The order of the Illinois Commerce Commission was a complete exercise of the legislative power of the State, and was in force immediately after its passage, notwithstanding a motion to reconsider might have been urged and entertained. If the State of Illinois, vesting the power to regulate rates in the Commerce Commission, had provided that the orders of the Commission should not be put into effect until

after a certain time, within which an application for a rehearing could be made, another question would be involved; but the statutes of Illinois did not so provide, and, the granting or denying of a petition for rehearing being wholly within the discretion of the commission, the legislative act was complete upon the entry of the order.

“The Prentis case was carefully considered by Judge Hook in *A., T. & Santa Fe Railway Co. v. Love et al.* (C. C.), 174 Fed. 59, and by Judge Sanborn in the same case on appeal, 185 Fed. 321, 107 C. C. A. 403, and the logic of the opinions in those cases makes it quite impossible for a different conclusion to be reached here.

“With reference to the plaintiffs in this case, it is clear that prosecution for violating the order of the Commission would not be suspended by the application for a rehearing. The character, force, and effect of the Commission’s order while it remains in operation is in no respect modified or affected by the opportunity given by the statute to apply to the Commission for a rehearing, and, however the order be styled, it is nevertheless, until changed or rescinded, the final legislative act of the State of Illinois. For an indeterminate time at least it is complete and binding so far as is concerned the public utility affected.”

The principle applied in that case is applicable here. The court held that unless the enforcement of the rates was suspended pending the consideration and determination of a petition for rehearing filed with the Commission, then the action was not

premature although instituted before a petition for rehearing had been filed and passed upon. If it is true that the action was not premature, though brought before the filing of an application for rehearing, because the character, force and effect of the Commission's order while it remained in operation was not modified or affected by the opportunity given by the statute to apply to the Commission for a rehearing, then does not the fact that the force and effect of the Commission's order in this case pending the appeal is in no respect modified or affected by the appeal, prevent this action from being premature? If it is true that, although the Chicago Railways Company had the right under the statute to apply to the Commission for a rehearing, nevertheless the Commission's order, until changed or rescinded, was the final legislative act of the State of Illinois, is it not also true here that, although appellant had the right to appeal to the Supreme Court of Oklahoma and to apply for a supersedeas, nevertheless the Commission's order, until changed, rescinded or suspended, was the final act of the State of Oklahoma? Is it not true that for an indeterminate time the Commission's order is complete and binding so far as concerns the appellant in this case?

Section 66 of the Public Utilities Act of California provides that after any order or decision by the Commission, any party pecuniarily interested may apply for a rehearing in the matter, and that "no cause of action arising out of any order or decision of the Commission shall accrue in any court to any corporation or person, unless such corporation or person shall have made, before the effective date of such order or decision, application to the Commission for a rehearing"; and the act empowers the Commission to suspend the order pending the rehearing. The Railroad Commission of California made an order fixing the rates of the Palmero Land & Water Company. That company filed no application for a rehearing, and did not ask the Commission to suspend the order pending the filing or hearing of such application, but at once applied to the District Court of the United States for the Northern District of California for an injunction enjoining the Commission from enforcing the order. Judge Van Fleet, in *Palmero Land & Water Company v. Railroad Commission of California*, 227 Fed. 708, construing the statute requiring the filing of a petition for rehearing and empowering the Commission to suspend the order pending the rehearing, in con-

nection with the decision of this court in the Prentis case, said:

“The Commission is expressly given power to suspend its order pending a rehearing, and it is to be presumed that it would do so in any case where required to maintain the *status quo*. It certainly will not be presumed that it will so undertake to palter with the rights of a party as to jeopardize his remedy, *nor could it do so with success. It is not within the power of the state to defeat the right of a party to have such an order judicially reviewed after it has reached a justiciable stage.* This principle is emphasized in the Prentis case. If, therefore, in a case where the party has presented his petition for rehearing, thus doing all that he can or is required to do to protect his rights, those rights should be threatened through the failure or refusal of the Commission to act, it cannot be doubted that a court of equity would deem the case one ripe for its interposition.

“In this case, however, the Commission has expressly declared at the bar and in its brief its readiness to entertain an application for a rehearing of the present order, notwithstanding the lapse of the usual time given for the purpose, and has intimated its readiness to suspend the effect of the order until such petition can be passed upon. Should such application be made, and relief denied for any reason, plaintiff will then be in a position to seek a judicial review of the order; but the present bill must, for the reasons indicated, be regarded as premature.”

In that case the California law provided for

just what the court found the Illinois law, in *Chicago Railways Company v. Illinois Commerce Commission*, did not provide for, namely, a petition for rehearing with power to suspend the order pending the determination of the petition. That is analogous to an appeal with power to suspend the order pending the appeal.

The Oklahoma law makes no provision for a motion for a new trial or petition for rehearing before the Commission, and the Supreme Court of Oklahoma has held that none is necessary, *Atchison, T. & S. F. Ry. Co. v. Love*, 23 Okla. 192; *Kansas City Southern Ry. Co. v. Love*, 23 Okla. 224. And in *Hollis et al. v. Kutz et al.*, 255 U. S. 452, this court said: "We do not perceive any advantage in requiring a party to file a complaint asking the Commission to review a decision just reached by it after a public hearing, nor do we see such a requirement in the statute."

When a case has reached the justiciable stage, when there exists a law or order enacted or made under authority of the State which is presently enforceable, and the enforcement of which will deprive a person of his property without due process of law, then the United States Court has jurisdiction.

*Wilcox v. Consolidated Gas Co.*, 212 U. S. 19. The object of the Fourteenth Amendment is to protect persons against the deprivation of life, liberty or property without due process of law. When the Commission's order reached a stage that it might be enforced against appellant judicially, then it had reached the judicial stage. If the order of the Commission now has such form and finality that it is operative upon appellant and must be obeyed by it under severe penalties, then that order of the Commission is a law of the State. It is immaterial that at some future time it may cease to be a law. That order is authorized by the Constitution and laws of Oklahoma. Those laws and that Constitution provide that it must be obeyed unless suspended by the Supreme Court. It is therefore a rule of action prescribed by the superior power in the State, which the inferior is bound to obey; and that is the accepted definition of a law. The Commission's order is the law for the time being. If it were not, then appellant would not be bound to obey it. If it were not, then appellant could not be fined \$500 for each and every violation of it. The fact that some six months or a year hence the Supreme Court of Oklahoma, another legislative body, may annul this law after appellant has been put into the hands of a receiver

furnishes appellant neither relief nor consolation. After its property has been taken without due process, the annulment of the law under which that was done will not help appellant.

It is immaterial how this order of the Commission may be characterized, whether it be called a tentative order or a law or a temporary law. Appellant's right to relief against it in the Federal Court depends, not upon how it is characterized, but upon its practical operation and effect. In *Mountain Timber Co. v. The State of Washington*, 243 U. S. 219, this court said on page 237, "The question whether a State law deprives a party of rights secured by the Federal Constitution depends, not upon how it is characterized, but upon its practical operation and effect."

If the Constitution and laws of Oklahoma are to be construed as authorizing the Commission to prescribe a rate for gas, and to enforce it under penalty of enormous fines while the company's appeal therefrom is pending legislatively before the Supreme Court of the State, even though it is confiscatory, then that order so made is and must be held to be a law of the State requiring the company under penalty of fines to conform to and permit its property

to be taken under the confiscatory order until the State Supreme Court, acting legislatively, shall reverse it. Such constitutional and statutory provisions so construed, and applied to such an order, would themselves be in violation of the Fourteenth Amendment.

In *Ex Parte Young*, 209 U. S. 123, this court held that while the Federal courts would not take jurisdiction if they should not, yet they must take jurisdiction if they should. It held that whenever a State makes rates, the carrier or utility affected thereby, if it contends that they are confiscatory, is entitled to a judicial determination of their validity before they are enforced against it; and that a State statute which provides for the violation of the prescribed rates penalties so enormous as to prevent the carrier or utility from resorting to the courts for the adjudication of their validity, is unconstitutional as a denial of the equal protection of the law and a taking of property without due process of law. Yet it was held in the instant case that appellant may be denied a resort to the courts while its property is being confiscated by the mere refusal of the court to take jurisdiction and to consider and determine whether confiscation exists or not.

In this case the rates have been prescribed and are being enforced. Appellant has had no judicial determination of their validity. The rates are being enforced in advance of such judicial determination; and yet if appellant violates the order prescribing the rates, it can be made to pay a fine of \$500 for each and every violation thereof. If it be true that the United States court may not grant a temporary injunction, enjoining the enforcement of those rates pending the determination of the legislative appeal in the State Supreme Court then those rates may be enforced for a year, or even two years, for an indefinite and indeterminate period, and appellant reduced to a state of bankruptcy and its property taken without due process of law, before it can procure a judicial determination of their validity. They have already been enforced for more than a year.

Is there any difference between taking one's property by subjecting him to fines for violating an unconstitutional rate statute, and taking it by making him conform to a confiscatory rate? If appellant does not conform to this confiscatory rate, then its property will be taken through fines. If it does conform to this confiscatory rate, then its property

will be taken in serving the public at the confiscatory rate. This is the logical result of the defendants' contention that appellant must conform to the confiscatory rate until the Supreme Court of Oklahoma, not in a judicial, but in a legislative proceeding, determines the adequacy of the rates prescribed, and that only after the Supreme Court in this legislative proceeding has determined the adequacy of the prescribed rates can the appellant bring an action in the Federal court. The rates are being enforced and the property is being taken, and no judicial inquiry or determination as to whether the rates are valid or unconstitutional has been had. Appellant is denied a judicial determination of that question.

Defendants say that the rates are still in the process of making; but they have been made already in that they have taken the form of a law which is being enforced. They have been made already to the extent that appellant is required to conform to them, although the State says that it does not know and will not know until the Supreme Court shall have passed upon them whether they are confiscatory or not. Suppose the Constitution and laws of Oklahoma baldly and boldly provided for exactly what has been done in this case. Suppose they ex-

pressly provided that the Commission could prescribe the rates, that a legislative appeal therefrom might be taken to the State Supreme Court, but that no supersedeas should be granted, and pending the appeal, the rates, although confiscatory in fact, should be enforced against the utility until their reversal by the court legislatively. Would not that legislation itself violate the Constitution of the United States? And if so, does not the act of the officials of the State in doing that very thing also violate the Constitution?

If the imposition of such enormous fines as to prevent a party from resorting to the court to test the validity of rates renders the law unconstitutional, would not a statutory provision that a utility could not seek a judicial construction of a law at all while it was being enforced because the Supreme Court of the State might in the future legislatively repeal the law, also render it unconstitutional? The thing the Constitution of the United States guarantees, according to *Ex parte Young*, is a judicial determination of the validity of a rate before it is enforced; the gist and substance of the constitutional right is the right to a judicial determination of the

validity of the statute. If that is denied, it is immaterial whether it is denied indirectly by means of such enormous fines as to prevent resort to the judiciary, or whether it is denied directly by an absolute refusal on the part of the courts to hear the matter. Here, if appellant, contending that the rates now being enforced against it are confiscatory, should put into effect higher rates, the Commission would fine it \$500 for each and every person to whom it charged the higher rate, and for each and every time it made the higher charge. It is therefore deterred from putting the higher rates into effect by the enormous fines imposed. Is it also precluded from having a Federal court consider and determine whether the rates now being enforced are confiscatory, and if found so, to temporarily enjoin them, because, forsooth, at some indefinite future day the Supreme Court of Oklahoma, not in a judicial but in a legislative capacity, will pass upon that question?

In *St. Louis, Iron Mountain & Southern Railway Co. v. Williams*, 251 U. S. 63, this court said:

“It is true that the imposition of severe penalties as a means of enforcing a rate, such as was prescribed in this instance, is in contravention of due process of law, where no ade-

quate opportunity is afforded the carrier for safely testing, in an appropriate judicial proceeding, the validity of the rate—that is, whether it is confiscatory or otherwise—*before any liability for the penalties attaches*. The reasons why this is so are set forth fully and plainly in several recent decisions and need not be repeated now. *Ex parte Young*, 209 U. S. 123, 147; *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19, 53; *Missouri Pacific Ry. Co. v. Nebraska*, 217 U. S. 196, 207-208; *Missouri Pacific Ry. Co. v. Tucker*, 230 U. S. 340; *Wadley Southern Ry. Co. v. Georgia*, 235 U. S. 651, 659, *et seq.*

“And it also is true that where such an opportunity is afforded and the rate is adjudged valid, or the carrier fails to avail itself of the opportunity, it then is admissible, so far as due process of law is concerned, for the State to enforce adherence to the rate by imposing substantial penalties for deviations from it. *Wadley Southern Ry. Co. v. Georgia*, *supra*, p. 667, *et seq.*; *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 246 U. S. 58, 62.

“Here it does not appear that the carrier had not been afforded an adequate opportunity for safely testing the validity of the rate, or that its deviation therefrom proceeded from any belief that the rate was invalid. On the contrary, it is practically conceded—and we judicially know—that if the carrier really regarded the rate as confiscatory, the way was open to secure a determination of that question *by a suit in equity against the Railroad Commission of the State, during the pendency of which the operation of the penalty provision could have been suspended by injunc-*

tion. *Wadley Southern Ry. Co. v. Georgia*, *supra*. See also *Allen v. St. Louis, Iron Mountain & Southern Ry. Co.*, 230 U. S. 553; *Rowland v. St. Louis & San Francisco R. R. Co.*, 244 U. S. 106; *St. Louis, Iron Mountain & Southern Ry. Co. v. McKnight*, *ibid.* 368."

But in the present case it was held that although the appellant regarded the rate as confiscatory, although in fact the order is confiscatory on its very face, there is no way open to secure a determination of that question for an indeterminate period, that a suit in equity against the Commission will not lie, and that during the pendency of the legislative appeal in the State Supreme Court the operation of the penalty provision can not be suspended either by supersedeas granted in that court or by a temporary injunction granted in the Federal court.

Under the law in Oklahoma appellant can not put into effect compensatory rates without subjecting itself to enormous penalties, and the object of this suit was to enjoin the Commission from enforcing the rates prescribed by it pending the legislative appeal. No adequate remedy is afforded appellant for testing in an appropriate judicial proceeding the validity of this rate, except by a judicial proceeding in the Federal court, because by Sec. 20, Art. 9 of the Constitution of Oklahoma all the courts of the

State are precluded from interfering with the Commission's order, except the Supreme Court, and that only by way of a legislative appeal, and not by way of a judicial proceeding (See Appendix). Appellant's application for a suspension of the Commission's order having been denied by the State Supreme Court, and the rate being enforced in advance of a judicial determination of its validity, even in advance of the Supreme Court's legislative determination of its validity, appellant brought this suit in equity against the Commission, and sought to have the operation of the penalty provisions of the statutes and Constitution suspended by a temporary injunction pending the determination of the legislative appeal in the Supreme Court.

In *Missouri v. Chicago, B. & Q. Ry. Co.*, 241 U. S. 533, this court held that a State can not by mandamus compel a railway company to comply with rates fixed by a State law, unless an opportunity is afforded to test the question of confiscation. Can it do so by means of fines without an opportunity to test the question of confiscation? What is the difference?

In *Riverside, etc., Mills v. Menefee*, 237 U. S. 189, this court said:

“Wherever a provision of the Constitution is applicable the duty to enforce it is imperative and all-embracing, and no act which it forbids may therefore be permitted.”

This would indicate that comity does not authorize a tolerance of the violation by a State of the Constitution of the United States; that comity does not provoke the question, “What is the Constitution between friends?”

If it is true as said in *St. Louis, Iron Mountain & Southern Railway Co. v. Williams*, 251 U. S. 63, that a carrier, contending that the rates fixed are confiscatory, has a constitutional right to a judicial determination of their validity “before any liability for the penalties attaches,” and if it is also true, as said in the *Prentis* case, that the carriers “were not bound to wait for proceedings brought to enforce the rate and to punish them for departing from it,” then, on taking the legislative appeal to the State Supreme Court, the appellant upon the giving of an adequate bond to make refunds to its patrons with interest, was entitled to a suspension of the order by the State Supreme Court as a *matter of right*; and upon that being refused and the confiscatory rates being enforced, it had the right, as this court said in 251 U. S. 63, to bring a suit in equity against

the Commission "during the pendency of which the operation of the penalty provision could have been suspended by injunction." If that is not true, then the confiscatory rates can be enforced against appellant for an indefinite time, although it contends that they are confiscatory, and in such case a judicial determination of their validity in advance of the assessment of penalties for violating the rates can not be had. If that is not true, then the carriers in the Prentis case were bound to let the rate be enforced if the Supreme Court denied a supersedeas.

**The action of the Supreme Court of Oklahoma in denying the supersedeas applied for in the legislative appeal was not *res adjudicata*, preventing the Federal Court from granting a temporary injunction.**

It was urged by the appellees below, and doubtless will be here, that the action of the State Supreme Court in denying the supersedeas applied for in the legislative appeal was an adjudication that the rates prescribed were not confiscatory, and rendered the matter *res judicata*. Judge Stone in his opinion does not refer to that question. Judge Pollock, who dissented and held that the temporary injunction should be granted, of course rejected the contention. Judge Cotteral, while not holding that

the order of the State Supreme Court was an adjudication, nevertheless said:

“Putting aside the supposed effect of this decision, illustrative of the views of that court, as an adjudication, the allowance of a temporary injunction necessarily involves a review and revision of the same. This the proprieties would hardly sanction, if it is avoidable.”

What proprieties forbid the review by the Federal courts of a legislative act of the State on the ground of its constitutionality?

In the Prentis case this court, premising that proceedings legislative in nature are not proceedings in a court, no matter what may be the general or dominant character of the body in which they may take place, and that in passing upon the appeal from the Commission the Supreme Court of Virginia would be acting legislatively and not judicially, expressly held that if, upon final hearing, the Supreme Court should affirm the rates, the same would not be *res judicata*. If the affirmance of the rates on final hearing would not be *res-judicata*, it is difficult to understand why their temporary affirmance by the same legislative body acting under the same authority, in the same legislative proceeding, would be so.

The action of the Supreme Court in refusing to suspend the order cannot be *res judicata* unless it was judicial in its nature. It was not judicial in its nature. The Constitution of Oklahoma forbids judicial interference by any court of the State with the rate orders of the Corporation Commission. The appeal given to the Supreme Court from rate orders is not judicial, but is legislative in character. That was specifically stated by this court in the Prentis case, and has been many time held by the Supreme Court of Oklahoma. *Atchison, T. & S. F. Ry. Co. v. State*, 23 Okla. 510; *C., R. I. & P. Ry. Co. v. State*, 24 Okla. 370; *Atchison, etc., Ry. Co. v. Müller*, 28 Okla. 109. Sec. 20, Article 9, of the Oklahoma Constitution provides:

“All appeals from the Commission shall be to the Supreme Court only \* \* \*. No court of this State (except the Supreme Court *by way of appeals as herein authorized*) shall have jurisdiction to review, reverse, correct or annul any action of the Commission within the scope of its authority, *or to suspend or delay the operation thereof*, or to enjoin, restrain, or interfere with the Commission in the performance of its official duties.”

The result is that all courts of the State, except the Supreme Court, are forbidden to suspend or delay the rate orders of the Commission. And while

the Supreme Court may suspend or delay them, yet it may not do so judicially, but only "by way of" the legislative appeal provided for in the Constitution. Section 21, Art. 9, of the Constitution provides that, "Upon the granting of an appeal, a writ of superseas may be awarded by the Supreme Court, suspending the operation of the action appealed from until the final disposition of the appeal." The appeal provided for in rate cases being legislative and not judicial in character, and the Supreme Court being prohibited by the Constitution from suspending or delaying the operation of rate orders except "by way of appeal," it follows of course that the superseas is incidental to the legislative appeal, and that the action of the court in granting or refusing it is legislative and not judicial in character.

The nature of the order to be suspended is also determinative of the question. The action of an appellate court in granting a supersedeas suspending the enforcement of a judgment or decree of a trial court pending the review thereof, is judicial. The suspension of the enforcement of a judgment or decree is the exercise of the same kind of power as that exercised in rendering the judgment or decree. But the rate order was not a judgment or

decree. Making it was not a judicial act. It was a law, and making it was a legislative act. In suspending the order, therefore, the Supreme Court would not be suspending the enforcement of a judgment or decree, but it would be suspending the operation of a law, temporarily repealing it. But the suspension of the operation of a law is a legislative and not a judicial act, unless it be done in a judicial proceeding by enjoining the officials from enforcing the law, which was not asked of the Supreme Court here. The Oklahoma Constitution forbids the Supreme Court to enjoin the Commission. It is foolish to say that the refusal of a legislative body to suspend for a period the enforcement of a law constitutes the question whether the law is confiscatory *res judicata*.

If the act of the State Supreme Court in refusing the supersedeas was judicial in its nature, then its order so refusing (its ultimate decision on the appeal being a legislative and not a judicial act) was a final order from which a writ of error would lie to this court under section 720 of the Revised Statutes. But no one will contend that such a writ would lie.

In *Atchison, T. & S. F. R. Co. et al. v. Love et al.*, 174 Fed. 59, 177 Fed. 493, 185 Fed. 321, 220 U. S. 618, the railways applied to the State Supreme Court for a suspension of the order, and the same was denied; and it was not considered that the denial thereof was an adjudication making the question of the constitutional validity of the rates *res judicata*.

The granting of a temporary injunction in this case would no more have been "a review and revision" of the legislative action of the Oklahoma Supreme Court in refusing to suspend the order, as suggested in Judge Cotteral's opinion, than was the case in *Atchison, T. & S. F. R. Co. et al. v. Love et al.*, *supra*; and there was no hesitation on that ground there. It would no more constitute such "review and revision" than would an injunction against the rates after their affirmance by the State Supreme Court. It would merely have constituted a judicial determination by the District Court that appellant's rights under the Constitution of the United States were being violated by the legislative and administrative officers of the State.

**The effect of Section 23 of Article 9 of the Oklahoma Constitution.**

Defendants contend that sec. 23, art. 9, Oklahoma Constitution, protects appellant against loss during the pendency of its legislative appeal, and that for said reason the Federal court should not take jurisdiction. The provision of the Constitution is as follows:

“Whenever the court, upon appeal, shall reverse an order of the Commission affecting the rates, charges, or the classifications of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such orders as, in its opinion, the Commission should have made at the time of entering the order appealed from; otherwise the reversal order shall not be valid. Such substituted order shall have the same force and effect (and none other) as if it had been entered by the Commission at the time the original order appealed from was entered.”

Defendants' contention is that, when the State Supreme Court passes on the legislative appeal, if it finds the prescribed rates too low, it will substitute an order fixing higher and reasonable rates; that said substituted order will be retroactive to July 1, 1921, the effective date of the Commission's order; and that it will create an indebtedness to appellant from each of its 30,000 patrons for the difference

between the proceeds of the gas used by each at the Commission rates since July 1, 1921, and what the proceeds would have been at the substituted rates. To this contention there are several answers:

First: The Oklahoma Supreme Court has never construed this constitutional provision, and has never held in any case that increased rates fixed by it will take effect retroactively. And here there are potent reasons why it should not do so. One of appellant's chief complaints is the city gate rate prescribed. The independent distributing companies buy about half of appellant's gas. Their rates to their patrons are fixed on the basis of the cost of the gas to them at the city gates. When appellant procured the temporary restraining order, they at once applied to the Commission for higher rates to meet the increase in the cost of gas, which was allowed them, but with the express proviso that the same should be in effect only while the restraining order was operative, and upon its dissolution those rates ceased. No order of any kind has been made for increased retroactive rates for them if the State Supreme Court should increase appellant's rates on its appeal. The Supreme Court could not give the independent distributing companies retroactive

increases on that account, because none of them, except the Oklahoma Gas & Electric Company, have appeals pending there, and that company's appeal is based only on the value the Commission placed on its property and the rates it allowed on the basis of the present city gate rate. The Commission holds that it cannot make, and the Constitution forbids it to make, retroactive changes in rates. Thus, section 23, article 9, of the Oklahoma Constitution provides that "no order of the Commission prescribing or altering such rates, charges, classifications, rules or regulations shall be retroactive." The result would be that for the Oklahoma Supreme Court to grant appellant increased rates retroactive over more than a year would ruin the independent distributing companies, and it is not likely to do so.

Second: Section 21, article 9, of the Oklahoma Constitution provides for the giving of security by the utility appealing in order that it may collect the higher rates pending the appeal, which security must be a bond to the State for the prompt refunding to its patrons of all charges which the company may collect pending the appeal in excess of those fixed by the final order of the court (see Appendix). And chapter 10, Session Laws of Oklahoma, 1913, page

10, makes the Commission a court of record with power to determine the amount of the refund due from any public utility in such cases, and to whom due, and with power to render judgment against the utility in one case in one lump sum for the entire refund due to the public, and making the judgment a lien on all the property of the utility. The entire amount found due the public, together with all expenses of checking and disbursing the same, is required to be paid by the utility directly to the Commission; and all sums not claimed by the patrons within two years are to be paid over to the State (see Appendix).

In other words, the Constitution and laws of the State require security from the utility to the public for the amount of all refunds due because of rates charged in excess of those finally fixed by the Supreme Court. It avoids a multiplicity of suits by determining in one action the entire amount due all the patrons, rendering judgment against the utility for the gross sum, which, together with the cost of the proceeding and the Commission's expense in disbursing the refunds, must be paid by the utility directly to the Commission, and the State gets that portion which the patrons do not claim.

Whereas, if a supersedeas is denied, the utility is given no security for the payment of the increased rates in the event such is ordered. The Commission is given no jurisdiction to determine the amount due it or to enforce payment thereof. Appellant would have 30,000 unsecured indebtednesses from 30,000 different patrons, accumulated and accumulating since July 1, 1921. Such consumers, as will not pay voluntarily must be sued in the regular courts, in a separate suit for each consumer. The thousands who will have moved away in the meantime cannot be sued. The insolvent cannot be collected from.

It may be said that appellant has deposits from its consumers to insure the payment of their bills. It is a fact that appellant has deposits from its domestic consumers equal to their average bill for one month, which cannot be security for eighteen months or two years. Appellant's total consumers' deposits are only \$287,534.04 (Pr. Tr. 357).

The provision for security to the patrons and none to the utility shows that it was contemplated that the utility might have a supersedeas upon the giving of the bond, and that this would be its security. In *St. L., I. M. & S. Ry. Co. v. Williams*, 251

U. S. 63, it was held that a carrier had a constitutional right to a judicial determination of the validity of the rates prescribed "before any liability for the penalties attaches"; and in the *Prentis* case it was said that the carriers "were not bound to wait for proceedings brought to enforce the rate and to punish them for departing from it"; and in *Missouri v. C., B. & Q. Ry. Co.*, 241 U. S. 533, it was held that a state could not by mandamus compel a railway company to conform to certain prescribed rates unless an opportunity is afforded to test the question of confiscation. This can only mean that in cases such as this the carrier or utility is entitled to the supersedeas as a matter of right.

Third: In *Southwestern Telephone & Telegraph Co. v. Danaher*, 238 U. S. 482, the syllabus is as follows:

"The rates of public service corporations, such as telephone companies, are fixed in expectation that they will be paid, and reasonable regulations tending towards prompt payment are necessary as the ability of such corporation to serve the public depends upon the prompt collection of their rates.

"Collection of such rates by legal process being practically prohibitive, regulations requiring payment in advance are not unreasonable, and a telephone company is not subject to

penalties for refusing to render service to a subscriber who is delinquent on past rates and refuses to pay in advance in accordance with an established rule uniformly enforced, or because it charges the full price to a subscriber who does not pay in advance while allowing a stated discount to those who do pay in advance.

“To enforce against a telephone company a penalty for refusing to furnish service under such conditions amounts to depriving it of its property without due process of law in violation of the Fourteenth Amendment.”

The State has no more right to require appellant to furnish its gas to the public on credit, or without just compensation paid or secured, than it would have to authorize the taking under the right of eminent domain of private property by a public service corporation on credit. As showing the analogy between the two, in *Reagan v. Farmers Loan & Trust Co.*, 154 U. S. 362, 410, this court said:

“If the State were to seek to acquire the title to these roads, under its power of eminent domain, is there any doubt that constitutional provisions would require the payment to the corporation of just compensation, that compensation being the value of the property as it stood in the markets of the world, and not as prescribed by an act of the legislature? Is it any less a departure from the obligations of justice to seek to take not the title but the use for the public benefit at less than its market value?”

The State can not authorize a person or a public service corporation to take property through the exercise of the right of eminent domain on credit. The just compensation must be paid or secured. *Cherokee Nation v. Kansas Railway Co.*, 135 U. S. 641, 658; *Sweet v. Rechel*, 159 U. S. 380, 400; *Chicago, B. & Q. R. Co. v. Chicago*, 166 U. S. 226, 241; *Williams v. Parker*, 188 U. S. 491.

It is recognized, and has been often stated by this court, that where either the State itself or any of its municipal subdivisions are taking the property for the use of the State or such municipal subdivisions, the property may be taken without security other than statutory provision for prompt payment by the State or the municipal subdivision of the just compensation, because in such cases the liability to pay the just compensation rests upon the whole property of the inhabitants of the State or municipal subdivision. In other words, the owner of the property taken has as his security the whole property of the inhabitants of the State or municipality. But it is uniformly held that where the State or a municipal subdivision thereof is not the taker, but an individual or a corporation is, then the compensation must be actually paid, or adequate se-

curity must be given for its payment, before the property may be taken. This court said in *Sweet v. Rechel, supra*, "The owner is entitled to reasonable, certain and adequate provision before his occupancy is disturbed." In *Chicago, B. & Q. R. Co. v. Chicago, supra*, this court said:

"In our opinion, a judgment of a state court, even if it be authorized by statute, whereby private property is taken for the State or under its direction for public use, without compensation made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the United States, and the affirmance of such judgment by the highest court of the State is a denial by that State of a right secured to the owner by that instrument."

In *Williams v. Parker, supra*, the City of Boston was the taker of the property, and in that connection this court said:

"That there may be novel questions in respect to the measure of damage, the value of the property that is taken, does not avoid the fact that a *solvent debtor, one whose solvency is not liable to go up or down like that of an individual, but is of substantial permanence*, is provided, as well as a direct and appropriate means of ascertaining and enforcing the amount of all such damage. In view therefore of the prior decisions of the Supreme Court of the State as

well as that in this case, we are of opinion that it cannot be held that there was a failure to make adequate provision for the payment of the damages sustained by the taking."

In *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239, 252, this court said:

"If the purpose be public the taking may be outright, provided reasonable, certain and adequate provision is made, at the time of appropriation, to ascertain and secure the compensation to be made to the owner. *Cherokee Nation v. Southern Kansas Railway Co.*, 135 U. S. 641, 659; *Sweet v. Rechel*, 159 U. S. 380, 399; *Western Union Tel. Co. v. Pennsylvania R. R. Co. et al.*, 195 U. S. 540. Any state enactment in violation of these principles is inconsistent with the due process of law prescribed by the Fourteenth Amendment."

But if the contention of the defendants in this case prevails, then appellant's gas will have been taken without just compensation paid, and it will be given merely an unsecured indebtedness against its patrons, many of whom will have left the country, and thousands of whom are insolvent.

Illustrating the situation, about a year ago the Corporation Commission made an order reducing the electric rates of the Oklahoma Gas & Electric Company in Oklahoma City, Muskogee, El Reno and Enid. That company appealed to the Supreme

Court of Oklahoma, procured a supersedeas by which it continued the existing rates in effect pending the determination of its appeal, and gave a bond to the State conditioned to refund the excess charged in the event the rates prescribed by the Commission were affirmed. A few months ago the Supreme Court affirmed the Commission's rates, whereupon the Commission determined from the company's records the amount of the refund due to each patron of the Oklahoma Gas & Electric Company and required that company to pay into its hands the full amount. The Commission then mailed out to the patrons of the Oklahoma Gas & Electric Company checks for the amount due each of said patrons. In the issue of the Daily Oklahoman dated June 11, 1922, it was stated that thousands of said checks had been returned to the Commission unclaimed; and it gave a list of the patrons whose checks had been returned, filling almost two columns in fine print. And on July 5, 1922, the Daily Oklahoman published the following:

**"REBATE TANGLE IS NOT SOLVED**

**"Thousands of Dollars in Checks Are Returned Undelivered.**

**"Thousands of dollars will revert to the State unless missing patrons of the Oklahoma Gas and**

Electric Company claim the checks now awaiting them in the files of the Corporation Commission's office. Several months ago the Corporation Commission ordered the Oklahoma Gas and Electric Company to rebate consumers for overcharges for electrical current between the middle of June and the middle of December, 1921. The overcharge was the result of a tentative order made by the Corporation Commission. Several thousand checks were mailed, but about 1,000 were returned as 'undelivered' by the postoffice. Those entitled to the checks had moved without leaving forwarding addresses.

"A similar situation prevails so far as citizens of Muskogee are concerned, about 500 checks being returned from that city. Comparatively few checks have been returned by the post office at Enid, and only about twelve from El Reno. At the end of two years, the unclaimed money will revert to the State."

Considering that in that case the money was going to and not coming from the patrons, a fair idea may be formed of what the situation would be if the debt was from the patron to the utility instead of from the utility to the patron.

Fourth: It is proper to inquire what would be appellant's situation if the Supreme Court of Oklahoma should refuse to increase the rates prescribed by the Commission, but should affirm the order as it stands, or should make an inadequate increase. Under such circumstances appellant would have lost reasonable compensation for its said services during

the entire period from July 1, 1921, until the date of said decision by the Supreme Court. Should it file its bill in the federal court only after the final determination of the legislative appeal in the Supreme Court, and then procure an injunction, appellant not having had a supersedeas and not having collected reasonable rates in the meantime, the injunction then procured would not preserve or restore to appellant any part of the compensation it had been entitled to since July 1, 1921. Whereas, had the Supreme Court granted a supersedeas and permitted appellant to charge higher and reasonable rates during the pendency of the appeal, if it had then affirmed the Commission's order, appellant could have brought its suit in the federal court, and have procured an injunction, not only against the enforcement of the rates thereafter, but also against being required to make refunds from the date of the granting of said supersedeas, and had the federal court upon the denial of said supersedeas, granted a temporary injunction against the enforcement of the rates pending the determination of the legislative appeal, then, if the Supreme Court should affirm the said rate order, appellant could file a supplemental bill and proceed to a final decree in the federal court, thus preserving itself from loss from the date of the

temporary injunction until the date of the final hearing in the federal court. But the Supreme Court of Oklahoma having refused the supersedeas, and the federal court having refused a temporary injunction, appellant is required to furnish its gas for public use without just compensation being either paid or secured.

Fifth: Exactly the same situation prevailed in *Atchison, T. & S. F. Ry. Co. et al. v. Love*, 174 Fed. 59, 177 Fed. 493, 185 Fed. 321, and 220 U. S. 618, as prevails in this case. The same constitutional provisions of Oklahoma existed. The rate orders were made by the Corporation Commission of Oklahoma. Legislative appeals were taken to the Supreme Court, and applications for supersedeas were made and denied. The railways brought their bills in the federal court and procured temporary injunctions while the appeals were pending in the State Supreme Court, which temporary injunctions were affirmed by the Circuit Court of Appeals for the Eighth Circuit, and a writ of certiorari was denied by this court. It was not considered that sec. 23, art. 9 of the Constitution of Oklahoma stood in the way of the granting of the temporary injunction.

The Commission's avowal in its answer of its willingness to entertain another application from appellant for increased rates constitutes no ground for denying the injunction.

The Commission in its answers quotes from sec-24, art. 9, Okla. Const., providing that the Commission's right to prescribe and enforce rate charges "affecting orders theretofore entered by it and appealed from, but based on circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of the appeal"; and it then alleges that in making order No. 1886 ~~it~~ based its calculations upon appellant's sales of gas in preceding years, and that if the facts are that appellant has not been able to sell as much gas as heretofore, it nevertheless has an adequate remedy by again applying to the Commission; that it has not availed itself of that remedy, and by reason thereof is not entitled to an injunction; and the Commission avows its readiness to consider any application which appellant may make to it for relief by reason of any different conditions and circumstances. This was argued in the court below as one ground why it should not take jurisdiction. To this appellant makes the following answers:

First: The evidence shows, as we shall point out further on, that appellant's earnings during the preceding year at rates higher than those fixed in order 1886 and when appellant was paying less for its gas, gave it a return of just half what the Commission in its order found was reasonable.

Moreover, the Commission expressly found in order 1886 that there had been a progressive decline in the amount of gas which appellant could sell each year since 1917; and it therefore had no right to assume that appellant would sell even as much gas during 1921 as it had sold during the previous years. On the contrary, this order was made on June 25, 1921, and it was in evidence before the Commission, and the Commission knew and states in its answer (Pr. Tr. 60) that from October 1, 1920, to June 25, 1921, appellant's sales of gas had been much less than during the same portion of the preceding year.

Moreover, the Commission expressly found that each year since and including 1917 appellant had been required to put more than its net earnings have been into new lines to new gas fields in order to sell a constantly diminishing supply of gas, and that these fields become exhausted and the new lines worthless before appellant can get back the cost of them.

Also, how can it be said that the Commission fixed the rates upon the basis of its experience and appellant's previous sales of gas, when in the order it found that, based upon the sales of gas during the preceding year and the depreciated original cost of appellant's property, a city gate rate of 35.2c per M was required to give appellant a return of 8%, and then fixed the rate at 25c for domestic and 20c for industrial gas?

Appellant's complaint, therefore, is not of "circumstances or conditions different from those existing at the time the order appealed from was made," but it is that the Commission's order was and is unreasonable and confiscatory even based upon the conditions existing at the time said order was made.

Second: Before this case was filed in the federal court, appellant's vice president discussed with two members of the Commission the question of filing a new application for increased rates, and the two members of the Commission stated to him that in such event each and every town and city affected would insist upon having a hearing in that particular town or city, and that the Commission could not hear such an application and make an order in it within less than ten months (Pr. Tr. 318).

The application resulting in the order complained of was filed on August 5, 1920, and was not determined until June 25, 1921, a period of eleven months; and the Commission in its answer alleges that the action was heard and determined "with all practicable expedition and dispatch," and that "the cause was finally disposed of without unnecessary delay" (Pr. Tr. 53).

Third: Under the decisions of this court appellant was and is entitled to a judicial determination of the validity of the rates prescribed before they are enforced against it; and appellant can not be required to forego that judicial determination and seek another legislative determination of their validity from the very body which made and is now enforcing the confiscatory rates. *Ex parte Young*, 209 U. S. 123; *St. L., I. M. & S. Ry. Co. v. Williams*, 251 U. S. 63; *Missouri v. Chicago, B. & Q. R. Co.*, 241 U. S. 533.

Upon that question, in the similar case of *Atchison, T. & S. F. Ry. Co. v. Love*, 174 Fed. 59, 63, Circuit Judge Hook said:

"The situation presented is that of a case calling for judicial inquiry and determination, and the second question is whether they may be

had in this court, or must be had in the state tribunals. Upon that, the following principles, believed to be firmly imbedded in the jurisprudence of this country, are decisive: When the jurisdiction of a court of the United States is invoked upon sufficient grounds, it cannot be relieved of its duty to take cognizance and proceed, either by constitutional provision or by legislative act of a state. If, according to recognized principles of jurisprudence, the case is in its essential features a civil action at law or in equity, it matters not that the state may have denied the complaining party access to its courts, or may have designated some particular local tribunal, to the exclusion of all others, state and national. The test is the existence of a controversy and its character, and the presence of grounds of federal jurisdiction, not whether the courts of the state are open, or to what extent. The exercise of jurisdiction so invoked is the right of the litigant under the supreme law of the land. It is a duty of the court which may not be avoided. *Lawrence v. Nelson*, 143 U. S. 215, 12 Sup. Ct. 440, 36 L. ed. 130; *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19, 40, 29 Sup. Ct. 192, 53 L. ed. 382; *Spencer v. Watkins* (C. C. A.), 169 Fed. 379."

And in the same case in 177 Fed. 493, 502, Judge Hook said:

"It is the law of the land that a state may not confine to its own courts a citizen who claims his rights under the Constitution of the United States have been denied. And the Supreme Court did not hold in the *Prentis* case that a similar result could be accomplished by pre-

scribing and enforcing under penalties a legislative rule, even though tentative, and restricting the remedy of the citizen to subsequent legislative inquiry and action."

In *Wilcox v. Consolidated Gas Co.*, 212 U. S. 1, 40, this court said:

"When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction, and in taking it that court cannot be truthfully spoken of as precipitate in its conduct. The right of a party plaintiff to choose a federal court where there is a choice cannot be denied."

In *Atchison, T. & S. F. Ry. Co. v. Love*, 174 Fed. 59, 177 Fed. 493, 185 Fed. 321, 220 U. S. 618, the railways might have filed a subsequent application with the Commission instead of going into the Federal Court, but it was not required of them. And in *Hollis v. Kutz*, 255 U. S. 452, this court, answering a similar contention, said:

"We do not perceive any advantage in requiring a party to file a complaint asking the Commission to review a decision just reached by it after a public hearing, nor do we see such a requirement in the statute."

If appellant can now be required to file a new application with the Commission instead of going into the Federal court, then, upon the Commission's again fixing confiscatory rates, appellant can again

be remitted to the Commission, and so on ad infinitum, and thus be denied a resort to the court altogether.

**The defendants' contention that the proceeding before the Commission was and is judicial, and that therefore the Federal court was without jurisdiction.**

In the defendants' answer it was asserted that the proceeding before the Commission resulting in order No. 1886 was judicial in its nature, and that therefore the Federal court was without power to grant the injunction; and it was asserted in the alternative that if in making order No. 1886 the Commission was not acting judicially, nevertheless in enforcing the same it would be so acting, and that therefore the injunction should not be granted.

This contention was fully answered by this court in *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210. In that case this court stated that proceedings legislative in nature are not proceedings in a court within the meaning of Rev. Stat. 720, no matter what may be the general or dominant character of the body in which they may take place; that the making of rates is a legislative act, even though hearings are held and investigations made as a preliminary

to that act; and that when the final act is legislative, the decision which induces it can not be judicial. Further on this court said:

“We may add that when the rate is fixed a bill against the Commission to restrain the members from enforcing it will not be bad as an attempt to enjoin legislation or as a suit against the state; and will be the proper form of remedy.”

We therefore submit that under the law the United States Court had jurisdiction, and that it was its duty to hear the cause and determine it upon its merits; and that it erred in refusing to do so.

**UNDER THE FACTS IN EVIDENCE THE COURT SHOULD HAVE GRANTED THE INJUNCTION.**

If we are right in our contention that the action was not premature, then this court must also determine whether under the facts disclosed appellant was entitled to the temporary injunction; for, the action being in equity, upon a reversal, this court without further proceedings in the trial court will make or direct the trial court to make such an order as should have been made in the first place. We shall therefore, as briefly as possible, present the grounds relied upon for the injunction.

**The Order Is Confiscatory on Its Face.**

In *Interstate Commerce Commission v. Louisville & N. R. Co.*, 227 U. S. 88, this court said:

“In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi-judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the ‘indisputable character of the evidence,’ *Tang Tun v. Edsell*, 233 U. S. 673, 681; *Chin Yoh v. United States*, 208 U. S. 8, 13; *Low Wah Suey v. Backus*, 225 U. S. 460, 468; *Zakonaite v. Wolf*, 226 U. S. 272; or if the facts found do not as a matter of law support the order made. *United States v. B. O. & S. W. R. R.*, 226 U. S. 14; cf. *Atlantic C. L. v. North Carolina Corporation Commission*, 206 U. S. 1, 20; *Wisconsin, M. & P. R. Co. v. Jacobson*, 179 U. S. 287, 301; *Oregon Railroad v. Fairchild*, 224 U. S. 510; *I. C. C. v. Illinois Central*, 215 U. S. 452, 470; *Southern Pacific Co. v. Interstate Commerce Commission*, 219 U. S. 433; *Muser v. Magone*, 155 U. S. 240, 247.”

Here the facts found by the Commission do not as a matter of law support the order it made. A copy of the order was attached to defendants' answer and made a part thereof (Pr. Tr. 71); it was also proven by the affidavit of Mr. Sharp and formally introduced in evidence, but, to avoid repetition that affidavit was omitted from the transcript. We

call attention to the following facts appearing on the face of that order:

First: The Commission found that the original cost of appellant's production and transmission property, excluding Claremore, Inola and Ramona, was \$14,528,879.86. It said, "All the evidence was to the effect that the production and transmission property was of this value, and there was no evidence whatsoever to the contrary" (Pr. Tr. 86-7). It also said, "For present purposes, therefore, the Commission will take as the value of the production and transmission system of the Oklahoma Natural Gas Company, including the general system and the Enid system, but excluding Claremore, Inola and Ramona, the sum of \$14,528,879.86" (Pr. Tr. 87). It found that the reproduction value was from 70 to 100 per cent more (Pr. Tr. 85), and that "if effect also be given to reproduction cost new, then the value for rate making purposes would have to be several million dollars larger than the values shown in Table I above" (Pr. Tr. 87).

It found that the depreciation, considering the large amount of new construction, was 18% (Pr. Tr. 87). As to the depreciation it said:

"If the original cost be taken as the value for

rate making purposes, then it would seem that that value ought not to be depreciated. In other words, if the company is to be denied in valuations for rate making purposes the benefit of the increase in the value of its property, that is to say, if it is to be denied appreciation, then it ought not to be charged with depreciation. All of the evidence in regard to the depreciation was that it amounted to 18% ; and in any event, if the Commission is to give any effect whatsoever to the testimony in regard to the reproduction value of the property the increase in the value of the property as represented by its reproduction cost is much more than sufficient to offset the depreciation."

Second: It found that for the year ending May 31, 1920, appellant's expenses, exclusive of Claremore, Inola and Ramona, were \$3,116,213.01; that during all that year, except a part of the month of May, appellant was paying only six cents per M for the gas it purchased, whereas it now pays ten cents; and that upon the basis of its paying ten cents per M for the purchased gas its expenses for that year would have been \$3,955,059.15 (Pr. Tr. 87-8).

Third: It found that all the evidence was to the effect that appellant had a going concern value of 15% of the value of its physical property (Pr. Tr. 89). It allowed a going concern value of only 10% (Pr. Tr. 89). It allowed as working capital, that is,

“the money the company is required to keep on hand in order to pay its salaries and wages to its employees, and to pay for gas purchased, and to pay for machinery and tools carried in the warehouse,” one-eighth of appellant’s annual expenses, that is its expenses for one and a half months (Pr. Tr. 88-9). It found that “this makes a total value for rate making purposes of \$16,476,150.24” (Pr. Tr. 89).

Fourth: It found that “all the witnesses who testified on the subject testified that depreciation and amortization would run from 12 to 15%” (Pr. Tr. 89). It found that if it allowed appellant 10% for dividends or interest upon the rate base of \$16,476,150.24, and an additional 10% for depreciation and amortization, a city gate rate of 42.1 cents per M would be required if the independent distributing companies eliminated their leakage, and that a city gate rate in excess of 38 cents per M would be required if they did not (Pr. Tr. 89-91). This rate was for each and every M cubic feet of gas delivered at the city gates, including both domestic and industrial gas.

Fifth: It found that if it allowed appellant a return of only 8% for interest or dividend and

10% for depreciation and amortization upon said rate base, then a city gate rate of 40.5 cents per M would be required for every M cubic feet of gas, both domestic and industrial, delivered at the city gates (Pr. Tr. 91).

Sixth: It found that if it allowed a return of 8% for interest or dividend and only 8% for depreciation and amortization, upon said rate base; then a city gate rate of 38.3 cents per M would be required for each and every M cubic feet of gas, both domestic and industrial, delivered at the city gates (Pr. Tr. 92).

Seventh: Having previously said that if it took the original cost as the rate base and denied appellant the benefit of the appreciation in the value of its property, then it would not charge appellant with depreciation, but would offset the appreciation amounting to from 70 to 100 per cent against the depreciation amounting to 18 per cent, the Commission then said that if it depreciated the original cost of appellant's production and transmission property 18 per cent, and if it allowed appellant a return of only 8 per cent for interest or dividend and 8 per cent for depreciation and amortization on the depreciated original cost, a city gate rate of 35.2 cents

per M would be required for each and every M cubic feet of gas, both domestic and industrial, delivered at the city gates (Pr. Tr. 93).

Eighth: The Commission pursued the matter no further, but, in the face of those findings, it fixed the city gate rate at 25 cents per M for domestic gas and 20 cents per M for industrial gas, and ruled that all gas used by any one patron in excess of 500 M cubic feet per month, should be considered industrial gas (Pr. Tr. 96-97).

We believe it requires no argument to demonstrate that this city gate rate of 25 cents per M for domestic gas and 20 cents per M for industrial gas is confiscatory on its face, and that the order so providing is not supported by the facts found, considering the Commission's findings that a return of 8% for interest or dividend and 8% for depreciation and amortization upon the depreciated original cost of the property, when reproduction value was much greater than original cost, required a city gate rate of 35.2 cents per M for each M cubic feet of gas delivered, including both domestic and industrial gas. We also call the court's attention to the following findings made by the Commission which further support the charge of confiscation.

First: The Commission recites that in its order of December 20, 1920, it had found that the following rates were necessary if appellant was to continue in business, and if its property was not to be rendered worthless before it could get back the cost of the property, to-wit:

First 100 M cu. ft. per month 58c per M net.

Next 400 M cu. ft. per month 50c per M net.

All over 500 M cu. ft. per mo. 40c per M net.

(Pr. Tr. 75-6).

The rates just previous to that had been as follows:

First 100 M cu. ft. per month 48c per M net.

Next 400 M cu. ft. per month 40c per M net.

All over 500 M cu. ft. per mo. 33c per M net.

Three-fourths of the gas sold in appellant's own distributing systems is sold in the City of Tulsa. Yet in the order complained of the Commission fixed the rates in Tulsa, Turley, Red Fork and Dawson at only 42 cents per M for domestic gas, and 25 cents per M for industrial gas (Pr. Tr. 99). In Deer Creek, Meeker, Nardin and Shamrock, it fixed a rate of 45 cents per M for domestic gas and 25 cents per M for industrial gas (Pr. Tr. 98-9). In Lamont and Sapulpa it fixed a rate of 47 cents per M for domestic gas and 25 cents per M for industrial gas

(Pr. Tr. 98-9). The remaining towns in which the rate ranged from 49 to 55 cents per M are small towns ranging from 200 to 3,000 inhabitants. The order therefore was an actual reduction in rates effective during the previous year.

Second: The Commission found that formerly appellant could buy gas at \$100 for each gas well; subsequently it was required to increase the price from  $2\frac{1}{2}$  to 3 cents per M at the well; and since then the price of gas in the field has steadily advanced until now appellant is required to pay 10 cents per M for the gas it buys, and only a short time before the Empire Gas Company bid  $11\frac{1}{2}$  cents per M for some gas appellant had been getting, and by over-bidding appellant took the gas away from it. As to the gas which appellant produces itself, the cost of production, including labor, drilling, casing and gathering lines, has more than doubled. In the transmission of the gas, the cost of pipe lines and compressors has trebled; and the cost of the labor entering into the laying of pipe lines and operating compressor stations has more than doubled (Pr. Tr. 76-77).

Third: It found that the fields from which appellant originally obtained gas have been exhausted,

and many new fields to which it has since built lines have also been exhausted; and that as a result appellant has been required since and including the year 1917 to make additional investments in new lines and compressor stations costing about five and a quarter million dollars, which has about equalled its net earnings during that time, in order to get and furnish gas at all, while the amount of gas which it has been able to get and sell has decreased each year from 29 billion feet in 1917 to 20 billion feet in 1920 (Pr. Tr. 77).

In other words it found that appellants business is a hazardous and wasting business; that appellant has been required to pyramid its investment since and including 1917, not for the purpose of increasing the amount or volume of business done by it, but for the purpose of being able to continue in business at all and do even a steadily decreasing business; and that the additional investment appellant has been required to make since and including 1917 in order to continue in business has equalled its net earnings. It found that these new pipe lines became worthless by the exhaustion of the fields to which they extended before they could be amortized under the 48-cent rate previously existing, and that was the rea-

son it made the 58-cent rate in its order of December 20, 1920 (Pr. Tr. 75-76).

The risk and hazard involved is an element which must be considered in determining rates. In *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19, 48, this court said:

"Such compensation must depend greatly upon circumstances and locality; among other things, the amount of risk in the business is a most important factor, as well as the locality where the business is conducted and the rate expected and usually realized there upon investments of a somewhat similar nature with regard to the risk attending them. There may be other matters which in some cases might also be properly taken into account in determining the rate which an investor might properly expect or hope to receive and which he would be entitled to without legislative interference. The less risk, the less right to any unusual returns upon the investments. One who invests his money in a business of a somewhat hazardous character is very properly held to have the right to a larger return without legislative interference, than can be obtained from an investment in Government bonds or other perfectly safe security. The man that invested in gas stock in 1823 had a right to look for and obtain, if possible, a much greater rate upon his investment than he who invested in such property in the city of New York years after the risk and danger involved had been almost entirely eliminated."

In *Re Baker Natural Gas Co.* P. U. R. 1921E 609, the Montana Public Service Commission said:

“The decided cases justify a higher rate of return for natural gas utilities than for any other utilities because of the relatively short period for capital investment therein, and the unusual hazards attending operation, and this notwithstanding these factors are given weight in the allowances for depreciation and depletion, which allowances must be borne by the rates charged for the service. We know of no sound reason for denying the application of these decisions to this case to the extent of three or four per cent beyond the rate of return found fair for other investments, having regard to all the elements comprehended in a ‘fair’ return and reasonable rates (*Lien v. Superior Electric Light & Water Works*, 14 M. U. R. —, decided February 23, 1921). Eight per cent seems now to be the minimum for all ordinary public utility investments in our jurisdiction. In *Re Missouri Street Railway Co.*, 14 M. U. R. —, decided December 7, 1920) and eleven or twelve per cent can not be too much for a capital outlay of many thousands of dollars in materials and appliances which may be reduced in value to zero ‘in the twinkling of an eye.’ If natural gas, ‘the cleanest and best natural fuel known to man,’ is to be put to its highest use, household consumption, efforts in this behalf must be liberally rewarded (U. S. Dept. Interior, Bureau of Mines, Tech. Papers 40-69, p. 19), and this has been done quite uniformly and without support from ‘war causes.’ *Bolivar v. Empire Gas & Fuel Co.* (N. Y.) P. U. R. 1919C, 115; re *West Virginia Central Gas Co.* (W. Va.)

P. U. R. 1918C, 453; re *Ashtabula Gas Co.* (Ohio) P. U. R. 1917D, 790; re *Montgomery Gas Co.*, P. U. R. 1917C, 924; re *West Side Gas Co.* (Cal.) P. U. R. 1916A, 276; *Landson v. Lawrence* (Kan.) P. U. R. 1916B 331; re *Bridgeport Natural Gas & Oil Co.* (W. Va.) P. U. R. 1916C, 253; re *Glenville Natural Gas Co.* (W. Va.) P. U. R. 1915F, 848."

Not only do the facts found by the Commission show the extreme risk and hazard of the business, but in defendants' answer they "admit that the business of producing and transporting gas for public use is a most hazardous enterprise" (Pr. Tr. 62).

As stated by the Commission in its order, "the result, as shown by the evidence, has been that since and including 1917, the Oklahoma Natural's net earnings each year, after paying its usual and ordinary expenses, and not counting its new investment as an expense, have just about equalled the amount it was required to expend in new lines in order to get and sell a constantly dwindling supply of gas. And as the fields to which they extend become exhausted, those lines, without having amortized, become comparatively worthless, except as junk, which entails a loss of the amount invested in them. This situation has already impaired the efficiency of the Oklahoma Natural's service, and it is leading to,

and if continued will inevitably end in early bankruptcy" (Pr. Tr. 77).

Notwithstanding that, the Commission reduced the rates below those in effect during the previous year. In the order of December 20, 1920, it raised the rates from 48 to 58 cents per M to enable appellant to raise a fund for amortizing the property; but in the order of June 25, 1921, it even reduced the rates below the 48-cent rate, although appellant was then paying ten cents per M for the gas it purchased as against the six cents per M which it had been previously paying.

Fourth: The Commission found that appellant's production and transmission property would become worthless, except as junk, when the natural gas is exhausted; and that it was therefore necessary that it be allowed a return not only for interest or dividend upon its value, but also for the purpose of amortizing the property by the time the gas is exhausted (Pr. Tr. 77-78).

We think it evident, therefore, considering the findings of the Commission as to the value of the property, the hazardous nature of the business, the necessity for pyramiding appellant's capital invest-

ment year after year, the progressive decline in the amount of gas appellant can sell each year, the progressive increase in the cost of gas in the field, the finding by the Commission that the allowance of a return of only 8% for interest or dividend, and an additional return of 8% for depreciation and amortization, upon the depreciated original cost of the property, required a city gate rate of 35.2 cents per M for every M cubic feet of gas, both domestic and industrial, delivered at the gates of each city, does not support the order fixing the city gate rate at 25 cents per M for domestic and 20 cents per M for industrial gas.

The rate base fixed by the Commission was confiscatory in that it excluded property and values necessary to be considered in fixing rates.

The Commission found that the original cost of appellant's production and transmission property was \$14,528,879.86; that reproduction cost new was from 70% to 100% greater than that; and that depreciation was 18%. It referred to the decision of this court in *San Diego Land Co. v. National City*, 174 U. S. 739 (Pr. Tr. 84), stated that it would not rule that appellant was restricted to the original cost of its property as a rate

base (Pr. Tr. 95), but that inasmuch as the reproduction cost new less depreciation was very much greater than the original cost, the original cost was the smallest value upon which it could be contended that the rates should be fixed (Pr. Tr. 95); and that the Commission would give effect to the increase in the value of the property by offsetting that against the depreciation (Pr. Tr. 87). It then found that if it allowed a rate of 8 per cent for interest or dividend and 8 per cent for depreciation and amortization, upon the undepreciated original cost of the property, a city gate rate of 38.3c per M would be required (Pr. Tr. 92); and it found that if it allowed the same rate of return upon the depreciated original cost of the property, a city gate rate of 35.2c per M would be required (Pr. Tr. 93); and it then fixed the city gate rate at 25c for domestic gas and 20c for industrial gas.

It is evident, therefore, that the Commission did not take even the undepreciated original cost of the property as the rate base. Had it done so it must have fixed the city gate rate at 38.3c per M for all gas. It did not even fix the rate base at as much as the depreciated original cost of the property. Had it done so it must have fixed a city gate rate of 35.2c per M for all gas, both domestic and industrial.

In *San Diego Land and Town Co. v. National City*, 174 U. S. 379, this court held that a public utility is entitled to demand, in order that it may have just compensation, "a fair return upon the reasonable value of the property at the time it is being used for the public." And in *San Diego Land and Town Co. v. Jasper*, 189 U. S. 439, this court reiterated that statement, and added, "That is decided, and is decided as against the contention that you are to take the actual cost of the plant, annual depreciation, etc., and to allow a fair profit on that footing over and above expenses."

Again, in *Wilcox v. Consolidated Gas Company*, 212 U. S. 19, 52, this court said:

"And we concur with the court below in holding that the value of the property is to be determined as of the time when the inquiry is made regarding the rates. If the property which legally enters into the consideration of the question of rates has increased in value since it was acquired, the company is entitled to the benefit of such increase."

Again, in *City of Denver v. Denver Union Water Co.*, 246 U. S. 178, it is said in the syllabus:

"In valuing the plant of a public service company as a basis for determining the adequacy of rates fixed by a city, it is proper to esti-

mate land at present market value, and structures at reproduction cost less depreciation.”

It would seem, therefore, that appellant was entitled to have some effect given to the reproduction cost of the property. The foregoing authorities would seem to be explicit upon the subject. Those who put their money into public utilities are not to be discriminated against, are not to be told that, while investors in other forms or property may have the benefit of the appreciation in its value, those who invest in public utilities may not do so.

Appellant did not then contend, and does not now contend, that it was the duty of the Commission to take the reproduction cost then prevailing as the rate base, because appellant recognized that the cost of reproduction at that time was abnormal. However, those prices had been prevailing for a considerable period, and the evidence before the United States Court in this case was to the effect that the value of appellant's property even now is 30 per cent greater than its original cost (affidavit of H. E. Musson, Pr. Tr. 144; affidavit of Samuel S. Wyer, Pr. Tr. 206). Appellant does contend that the Commission should have done in fact what it announced in theory, viz., have given consideration

both to original cost and to reproduction cost new, and should have at least offset the 18 per cent depreciation with the 70 to 100 per cent appreciation, and that the Commission should at least have taken the undepreciated original cost of the property as the rate base, and should have fixed rates which would allow a reasonable return upon that rate base. It did not do so.

Also, in determining the original cost the Commission excluded \$688,000 of property owned by appellant and used and useful in its public service. The facts with respect to that are shown in the affidavits of R. C. Sharp (Pr. Tr. 125), and H. E. Musson (Pr. Tr. 144-5), and may be briefly stated as follows: Appellant, to serve the public, is required to be constantly building lines to new wells and new gas fields, and to be drilling new wells, repairing its lines, and building and repairing compressor stations. To do that with dispatch it is required to keep in stock and on hand in its warehouses for use in its production and transmission system line pipes, fittings, casings, and other such supplies. If it waits to purchase them until they are actually needed, then the public suffers while they are being delivered. One of such warehouses is located at Tulsa,

and with the stock therein inventoried \$609,400. Another such warehouse was situated at Cement and the stock therein inventoried \$65,000. Another such warehouse was situated at Blackwell and the stock therein inventoried \$8,600. Also appellant owned land in Enid costing \$1,400, and buildings thereon costing \$3,500, on and in which were situated its regulator station used and useful in the Enid transmission system. Appellant does not own the distribution system in Enid. When the engineers, both for appellant and for the Commission, made their inventories and appraisals they listed the warehouse stock in Tulsa under the heading "Tulsa," and did not place the same in appellant's production and transmission property. They also listed the property in Enid, Blackwell and Cement as being in those towns, although appellant owned no distributing system and received no revenue in either of those towns, and they omitted to place the same in appellant's production and transmission property. In determining the value of appellant's distributing system in Tulsa, the Commission properly eliminated the warehouse and warehouse stock therein, but did not add the same to the production and transmission property, and the Commission also failed and refused to add to the transmission property the

warehouses and stock therein in Blackwell and Cement, and the land and buildings in Enid. These made a total of \$688,027.78 of property which appellant had, and which, if it served the public properly and efficiently, it was required to have and to keep on hand, but which the Commission refused to include in the value of any of its property for rate making purposes. Its reason for so refusing was that it allowed appellant a working capital of \$494,382.39, which it stated represents the money which appellant is required to keep on hand in order to pay its salaries and wages to its employees, and to pay for gas purchased and to pay for machinery and tools and stock carried in the warehouses (P. Tr. 89). Appellant is in fact required to keep on hand when it can as much as the Commission allowed it as working capital in money for the payment of salaries and wages to its employees, and for gas purchased and for its taxes, and in fact the working capital actually allowed was just one-eighth of what the Commission found appellant's annual expenses to be, or its expenses for one and one-half months. It is submitted that a working capital of \$494,382.39 could not be sufficient to cover the item of \$688,000.

In appellant's verified bill it is alleged that the present fair value of its property used and useful

in rendering its said public service is not less than the sum of 20 million dollars (Pr. Tr. 6). This included both the production and transmission property and the distribution properties. In the affidavit of H. E. Musson it is stated that the present fair value of appellant's production and transmission property, exclusive of Claremore, Inola and Ramona, and exclusive of additions made since October 31, 1919, is not less than 19 million dollars (Pr. Tr. 144).

**The Rates Fixed Are Confiscatory In Fact.**

Appellant operated under the rates prescribed in said order from July 1, 1921, until it procured the temporary restraining order on December 16, 1921, with the following result: During the month of July, 1921, its expenses exceeded its gross income in the sum of \$72,118.25; in August its expenses exceeded its gross income in the sum of \$68,162.30; in September its expenses exceeded its gross income in the sum of \$84,071.81 (Pr. Tr. 126 and 208). From July 1, 1921, to December 31, 1921, appellant's gross earnings at the rates fixed by the Commission were \$1,693,300.36. Its operating expenses during the same period were \$1,786,951.33, leaving a net operating deficit during the said six months of \$93,650.97,

without charging to expense anything for either amortization or depreciation (Pr. Tr. 370).

Applying the rates prescribed by the Commission in its said order to the business done during the year beginning November 1, 1920, and ending October 31, 1921, would have brought appellant a net income on its production and transmission property of only \$299,079.81 (Pr. Tr. 208-9), without charging to expense anything for either amortization or depreciation, and this upon a property which the Commission valued on the original cost basis at more than 14½ million dollars, and which it said in its answer should earn 8 per cent for interest or dividend upon the investment and 8 per cent for depreciation and amortization (Pr. Tr. 65), though in an order made by the Commission on November 21, 1921, for the Southwestern Oklahoma Gas & Fuel Company, which obtains its gas from appellant, the Commission said:

“It has been shown that these utilities have enjoyed but scant prosperity during the term of their existence, and that they have not been able to earn sufficient to pay a fair and reasonable return upon the amount of capital invested, and nothing whatever for depreciation and wear and tear on the property. In view of this the Commission is of the opinion that a deprecia-

tion reserve from this time forth amounting to 10 per cent will be just and reasonable, and that in view of the hazardous nature of the business a return on the capital invested of a like sum, *i. e.*, 10 per cent, is just and fair" (Pr. Tr. 133).

During the calendar year 1921 appellant's actual gross income from the sales of gas for all purposes, excluding Claremore, Inola and Ramona, at the rates actually existing, was \$4,297,051.97. Its total expenses during said calendar year were \$3,762,436.02, without charging to expense anything for amortization or depreciation. Its net income during the year 1921 upon the rates actually existing was \$534,615.95 (Pr. Tr. 371). This included the income not only from the production and transmission property, but also from the distributing property, the Commission having found the whole to be of a value in excess of 18 million dollars. That portion of the income accruing during the first half of the calendar year was earned at the rates in effect during that time, and the deficit of more than \$93,000 during the last half of the year accrued under the rates herein complained of.

The following table shows graphically the reduction which order 1886 made in the rates over those prevailing during the previous year. In ex-

planation thereof, in the first column is listed the towns in which appellant owns the distributing plants. In the second column is the number of M cubic feet of domestic gas appellant sold in each town during the year beginning November 1, 1920, and ending October 31, 1921, the figures being taken from appellant's verified bill, which Mr. Dalious, appellant's auditor, in his affidavit states is correct (Pr. Tr. 209-210). The figures in parenthesis opposite the name of each town is the page of the printed transcript on which the number of feet of gas sold in said town may be found. The towns taking the same domestic rate are grouped together. The third column is the domestic rate prescribed in order 1886 for each town (Pr. Tr. 98). The fourth column is what the gross proceeds of the domestic gas sold in each town during said year would have been at the rates fixed in order 1886. The table is as follows:

*Domestic gas sold in appellant's own distributing plants from November 1, 1920, to October 31, 1921, and what the gross proceeds thereof would have been at the rates fixed in order No. 1886.*

Towns	M Cu. Ft. Sold	Rate Fixed in Order 1886	Proceeds
Tulsa (19)	2,547,184	42c	\$1,069,817.28
Dawson (25)	6,167	42c	2,569.14
Red Fork (39)	26,862	42c	11,282.04
Turley (42)	4,847	42c	2,035.74
Total at 42c	2,585,060 M ft.		\$1,085,704.20
Deer Creek (26)	8,674	45c	\$ 3,903.30
Meeker (34)	14,465	45c	6,509.25
Nardin (36)	7,278	45c	3,275.10
Shamrock (40)	50,263	45c	22,618.35
Total at 45c	80,680 M ft.		\$ 36,306.20
Sapulpa (20)	407,282	47c	\$ 191,422.54
Lamont (31)	20,131	47c	9,461.57
Total at 47c	427,413 M ft.		\$ 200,884.11
Pond Creek (37)	29,418 M ft.	49c	\$ 14,414.82
Depew (27)	13,929	50c	\$ 6,954.40
Edmond (28)	66,115	50c	33,057.50
Haskell (29)	75,947	50c	37,953.50
Hunter (30)	12,641	50c	6,320.50
Kellyville (31)	14,899	50c	7,449.50
Luther (32)	13,203	50c	6,601.50
Total at 50c	196,734 M ft.		\$ 98,337.00
Wellston (43)	19,034 M ft.	52c	\$ 9,807.68

Towns	M Cu. Ft. Sold	Rate Fixed in Order 1886	Proceeds
Arcadia (21)	6,796	55c	\$ 3,737.80
Chandler (22)	60,881	55c	33,484.55
Coweta (23)	29,937	55c	16,465.35
Davenport (24)	10,294	55c	5,661.70
Midlothian (33)	1,424	55c	783.20
Peckham (36)	5,109	55c	2,809.95
Porter (38)	12,400	55c	6,820.00
Stroud (41)	33,433	55c	18,388.15
Total at 55c	160,274 M ft.		\$ 88,150.70

*Resume.*

	Proceeds
Amount sold at 42c per M 2,585,060 M,	\$1,085,704.20
Amount sold at 45c per M 80,680 M,	36,306.20
Amount sold at 47c per M 427,413 M,	200,884.11
Amount sold at 49c per M 29,418 M,	14,414.82
Amount sold at 50c per M 196,734 M,	98,337.00
Amount sold at 52c per M 19,034 M,	9,807.68
Amount sold at 55c per M 160,274 M,	88,150.70
Total	3,498,613 M, \$1,543,604.71

Average domestic rate 44.1c per M.

Amount of gas sold at 42c, 2,585,060 M ft., equals 74% of total sales in appellant's own distributing plants.

The same amount of gas, to wit, 3,498,613 M cubic feet, sold at 48c per M, the domestic rate prevailing during 1920, would have brought \$1,679,334.24. The domestic rate prescribed in order No.

1886, therefore, constituted a reduction from 48 to 44.1 cents per M, and made a reduction upon the same volume of sales of \$135,729.53 in appellant's own distributing systems.

In 1920, during the greater part of which appellant was paying only 6c per M for the gas it purchased, and getting 48c for domestic and 33c for industrial gas, and when it sold 20 billion feet, it made only half of what the Commission says it ought to make. It now pays 10c for the gas which it purchases, gets only 42c for three-fourths of its own domestic sales, and 25c for industrial, and sells only 14 billion feet per annum (Pr. Tr. 348 and 371); and the Commission knew and found that there was, and since 1917 had been, a progressive decrease in the amount of gas appellant could sell.

As to the gas sold to the independent distributing companies, under the divisional contracts appellants received two-thirds of the collections made for gas sold for domestic purposes, and three-fourths of the collections made for gas sold for industrial purposes. From April 15, 1920, to April 1, 1921, the rate was 48c per M for domestic and 33c per M for industrial gas. Of this 48c appellant received 32c per M, and stood the leakage in the distributing

plants, which averaged 20%. Appellant therefore received 32c for 80% of the gas furnished, which equalled 25.6c per M for all of it, or six-tenths of a cent more than the city gate rate which the Commission fixed for domestic gas. Of the 33c per M for industrial gas furnished the independent distributing companies, appellant received three-fourths, or 24¾c per M, but stood the leakage of 20%, thus getting 19.8c per M for the industrial gas furnished, as against 20c per M city gate rate fixed for industrial gas.

The effect of order 1886 is to make no increase in appellant's receipts from the independent distributing companies as compared with the rates prevailing from April 15, 1920, to April 1, 1921, and to make a reduction in appellant's receipts from its own distributing plants; and this notwithstanding the fact that during most of the year 1920 appellant was paying only 6c per M for the gas at the well, whereas it is now and on the date of the order complained of was, paying 10c, and notwithstanding appellant sold 20 billion cubic feet in 1920 as against 14 billion in 1921; and notwithstanding in 1920 its net earnings were only \$1,460,748.02 (Pr. Tr. 16, 121-2, and 320), as against the Commission's own

finding and its statement in its answer and affidavits that appellant should have a percentum of return which would produce it a net income of \$2,900,000 on the valuation found by the Commission.

Thus, the Commission found that the production and transmission property had a value for rate making purposes, including going concern value and working capital, of \$16,476,150.46; and it states in its answer that appellant is entitled over and above its expenses to 8% for interest or dividend and an additional 8% for depreciation and amortization (Pr. Tr. 65). This would give appellant a net earning on the production and transmission property of \$2,636,184.07 per annum. The Commission found that appellant's various distributing plants, excluding Claremore, Inola and Ramona, had a total value of \$2,046,600.94. This is the sum total of the values of the various distributing plants found by the Commission (Pr. Tr. 98). It further found that upon the distributing property appellant was entitled to a return of 8% for interest or dividend and 5% for depreciation (Pr. Tr. 98); and the same is also stated in the defendants' answer. This would give appellant a net earning upon its distribution property of \$266,058.12; making a total net earning

of \$2,902,242.19 per annum. Appellant's net earnings during the calendar year 1920 under higher rates than those fixed by order 1886, when appellant was paying less for gas, and when it was selling more of it, was only \$1,460,748.02, or just half what the Commission found appellant was entitled to.

Appellant purchases gas in southern Oklahoma in competition with the Lone Star Gas Company, which transports its gas to Dallas and Ft. Worth, Texas, and there obtains a net rate of 67½c per M for it (Pr. Tr. 129, 134-135). Appellant transports its gas as far, and gets 42c per M for it. Appellant also purchases gas in northern and northeastern Oklahoma in competition with the Kansas Natural Gas Company, the Empire Gas Company and the Wichita Pipe Line Company, which transport the same to Kansas and Missouri, and there receive rates for it ranging from 56c to \$1 per thousand (Pr. Tr. 129). Natural gas contains about twice the heating units of artificial gas, and on the basis of its actual value, as compared with artificial gas, is intrinsically worth to the domestic consumer not less than \$2 per M (Pr. Tr. 129, 145 and 204).

Appellant's financial condition was and is desperate. In addition to its funded indebtedness of

\$1,010,000, it has short time notes due and payable amounting to \$1,661,000, for money borrowed from banks with which to pay its expenses and build new lines, on which appellant's directors are endorsers; and appellant has no money with which to pay same (Pr. Tr. 115, 347, 357-362).

Each year since and including 1917 appellant has been required to make additional investments in excess of its net earnings in building new lines to new fields and in building compressor stations, in order to serve the same patrons it was already serving. Its business is drawing to an end, when its property will have only a salvage value. The result will be that appellant's stockholders will have put back into the property all they will have received from it, and will then lose their investment.

The business is hazardous and uncertain, and it is estimated that appellant can not continue in business for a longer period than from four to eight years (Pr. Tr. 122, 144, 203-4). Illustrative of the uncertainty of the business and the short life of the gas fields, it was in evidence that in 1920 John C. Keys, who furnished gas at Lawton, and had what was thought to be a large and productive gas field in southern Oklahoma, had a rate case before the

Commission in which he contended for an allowance for amortization sufficient to amortize his property in seven or eight years. This was refused by the Commission. That gas field is now exhausted, and his company is in the hands of a receiver (Pr. Tr. 129); and J. W. Duval, gas engineer of the Corporation Commission, and J. A. Adams, its conservation officer, made an official report to the Commission on November 14, 1921, respecting this field and showing its depleted condition (Pr. Tr. 136-8). 80% of appellant's gas now comes from what is known as the Duncan field (Pr. Tr. 333-4), and on December 15, 1921, the said Duvall, the Commission's gas engineer, together with Messrs. Walker and Hughes, members of the Commission, made an inspection and investigation of the Duncan field, and found that the 35 wells in that field from which appellant was then getting gas originally had an open flow volume of 911 million cubic feet per day and a rock pressure of 568 pounds; that the open flow volume has already been reduced to 459 million cubic feet, and the rock pressure to 379 pounds, and that 18 of the 35 wells were already making some water. This report in full may be found on page 354 of the printed transcript. This field was opened up only 18 months

before. Since that time appellant has been connected with 53 wells, of which 18 are already dead and disconnected, and an additional 18 are now making water (Pr. Tr. 334).

In Oklahoma the legal rate of interest, in the absence of contract stipulation, is 6%, and by contract one may charge and receive 10% per annum (Rev. Laws Okla. 1910, sec. 4); and 10% per annum is as little as persons who have invested their money in banking, in merchandising, and other such forms of business, expect to receive (Pr. Tr. 17); and on November 16, 1921, the Corporation Commission, in order No. 1955, allowed the Southwestern Oklahoma Gas & Fuel Company, which purchases its gas from appellant and distributes the same in Duncan and Marlow, a return of 10% for interest or dividend and 10% for depreciation and amortization (see said order, Pr. Tr. 131, 133). That company's supply will not fail until appellant's supply fails, and it bears none of the risks of producing and developing and building new lines to new fields.

In this same case, on December 20, 1920, with all the facts before it that were before it on June 25, 1921, the Commission made order No. 1829, fixing a 58-cent rate for appellant, and stating that it

was clearly apparent that if appellant was not to be deprived of the value of certain of its properties by failing to receive compensation therefor while such properties were being used in rendering service, then an increase of rates must be given at that time; and further stating that in its efforts to reach new fields and secure additional supplies of gas, appellant has expended a million and a half dollars annually for the last four years, making the payment of dividends more difficult and new capital harder to secure. That order in full is set forth in the printed transcript beginning on page 364.

Applying the city gate rate of 25c per M for domestic gas and 20 cents per M for industrial gas, and the distribution rates fixed by the Commission in its said order, to the business done by each of appellant's distributing systems for the year ending October 31, 1921, would have caused appellant a deficit in its Chandler distributing system of \$1,432.37 (Pr. Tr. 22); in its Coweta distributing system \$3,031.00 (Pr. Tr. 23); in its Dawson distributing system \$1,131.47 (Pr. Tr. 25); in its Kellyville distributing system \$690.35 (Pr. Tr. 30); in its Turley distributing system \$627.13 (Pr. Tr. 42). Its net earnings in its Tulsa distributing plant would

have been \$88,773.13 (Pr. Tr. 18); in Sapulpa, \$25,379.94 (Pr. Tr. 20); in Arcadia \$488.17 (Pr. Tr. 21); in Davenport \$1,308.09 (Pr. Tr. 24); in Deer Creek \$270.09 (Pr. Tr. 26); in Depew \$810.86 (Pr. Tr. 27); in Edmond \$4,901.44 (Pr. Tr. 28); in Haskell \$4,225.13 (Pr. Tr. 29); in Hunter \$1,425.68 (Pr. Tr. 30); in Lamont \$1,746.00 (Pr. Tr. 31); in Luther \$661.34 (Pr. Tr. 32); in Midlothian \$132.43 (Pr. Tr. 33); in Meeker \$535.11 (Pr. Tr. 34); in Nardin \$503.80 (Pr. Tr. 35); in Peckham \$537.41 (Pr. Tr. 36); in Pond Creek \$1,663.41 (Pr. Tr. 37); in Porter \$648.64 (Pr. Tr. 38); in Red Fork \$1,319.87 (Pr. Tr. 39); in Shamrock \$815.38 (Pr. Tr. 40); in Stroud \$2,254.44 (Pr. Tr. 41); and in Wellston \$195.98 (Pr. Tr. 43).

#### APPELLANTS' ANSWER TO DEFENDANTS' CONTENTIONS.

**The value of appellant's production property used and useful in the public service must be taken into account in fixing its rates.**

In order 1886 the Commission professed to take into account the value of appellant's production property in fixing the city gate rate. It stated that appellant "is engaged in the *production*, purchase, transmission and distribution of natural gas" (Pr. Tr. 71). It said, "As to the gas which the Oklahoma Natural produces itself, the cost of *producing*, in-

cluding labor, drilling, casings and gathering lines, has more than doubled since said percentage contracts were entered into" (Pr. Tr. 76). It said, "It is obvious that a return that was adequate for the Oklahoma Natural \* \* \* when the cost of *producing* gas was less than half what it is now \* \* \* could not be adequate under these changed conditions" (Pr. Tr. 77). Further on it said:

"There is another matter that must be considered. The *production* and transmission property of the Oklahoma Natural Gas Company will become practically worthless, except for what it will bring as junk when the natural gas is exhausted. \* \* \* It is therefore necessary that the Oklahoma Natural Gas Company should be allowed a return not only for interest or dividend upon the amount invested in the *production* and transmission property, but also for the purpose of amortizing the *production* and transmission property" (Pr. Tr. 77-8).

Then having determined to fix a city gate rate, the Commission said:

"In fixing the city gate rate the value of the Oklahoma Natural Gas Company's distributing plants, as well as the expense of their operation, will, of course, be excluded. Only the value and expenses of the property of the Oklahoma Natural used and useful in *producing* and transporting the gas to the city gates will be included" (Pr. Tr. 83).

The Commission then referred to the evidence

of the various witnesses as to the value of the production and transmission property, and said:

“For present purposes, therefore, the Commission will take as the value of the *production* and transmission system of the Oklahoma Natural Gas Company, including the general system and the Enid system, and excluding Claremore, Ramona and Inola, the sum of \$14,528,879.86” (Pr. Tr. 87).

It then said, “The next matter to be determined is the *production* and transmission expense” (Pr. Tr. 87); and it thereupon went into that question. It next said:

“The next question is what the *production* and transmission system, excluding Claremore, Ramona and Inola, should earn; and assuming the contention to be correct that a natural gas *producing* and transporting company, because of the uncertainty and hazards of the business, is entitled to a return of 10%, and that an additional 10% is a reasonable charge for depreciation and amortization, what the company should earn is shown by Table III as follows.” (Pr. Tr. 88).

In short, in order No. 1886 the Commission professed to take into consideration both the value and the expenses of appellant's production property used and useful in the public service, as it had theretofore done in every rate case of every natural gas

company which produced all or a part of its natural gas.

In its answer in this case, however, it averred that the production property and expenses should not be considered, but should be eliminated from appellant's values and expenses in determining the validity of the rate. This contention is a pure afterthought, a repudiation of its own findings and of its own prior uniform custom and practice, made in an effort to sustain the confiscatory rates. It bases that contention upon a new and strained interpretation which it now seeks to give to the act of the Oklahoma Legislature approved March 25, 1913 (Chapter 93, Session Laws 1913, p. 150), defining public utilities and conferring upon the Commission jurisdiction over them. (For said act see Appendix B.) To that contention appellant makes the following answers:

First, the act has never been construed by any court or by the Commission to exclude the gas production property of a natural gas company used and useful in its public service; and a reasonable construction thereof does not exclude the same.

Second, to exclude the gas production property

of a natural gas company used and useful in its public service in fixing the rates for natural gas would be confiscatory of that property and therefore violative of the Fourteenth Amendment.

First: Section 1 of the act is as follows:

"Section 1. The term 'public utility' as used in this act, shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, except cities, towns, or other bodies politic, that now or hereafter may *own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public.*

"(a) For the conveyance of gas by pipe line.

"(b) For the production, transmission, delivery, or furnishing of heat or light with gas.

"(c) For the production, transmission, delivery or furnishing electric current for light, heat or power.

"(d) For the transportation, delivery or furnishing of water for domestic purposes or for power.

"The term 'Commission' shall be taken to mean Corporation Commission of Oklahoma."

Defendants say that by said section the public utility features of a natural gas company are (a) "the conveyance of gas by pipe line," and (b) "The

production, transmission, delivery or furnishing of heat or light with gas." They say that "the conveyance of gas by pipe line" includes the transmission property, but not the production property; and that in (b), the "production" mention is the production of heat or light *with* gas, and not the production *of* gas; and hence it was the legislative intent to exclude the production property and expenses of a natural gas utility in fixing its rates.

It will be observed that the act nowhere specifies what the Commission is to consider in fixing rates. Section 1 merely defines public utilities, and section 2 gives the Commission power to fix and establish their rates, it being understood of course that the elements determining the rates will depend upon facts, circumstances and conditions that are not the same in every case, and are no more subject to legislative delimitation than is the measure of the value of property taken under the right of eminent domain. There is no more requirement that the value of the production property and the cost of producing the gas be mentioned in the definition of a public utility, in order that those elements may be considered in fixing the rates, than there is that the transmission and distributing expenses be spe-

cifically mentioned before they can be considered; and they are not mentioned in the act.

The act says that "the term 'public utility' \* \* \* shall be taken to mean and include every corporation \* \* \* that now or hereafter may own, operate or manage any plant or equipment, or any part thereof, directly or indirectly, for public use." That comprehends appellant and its production property. It owns and operates gas leases and wells for public use, and they are as much a part of its plant and equipment as is the generating plant of an electric company. Then the act says, "or may supply any commodity to be furnished to the public." Appellant supplies natural gas to be furnished to the public. It supplies it with its production property, as it conveys it with its transmission property. If the value and expenses of the transmission property used in conveying the gas are to be considered, then the value and expenses of the production property which supplies the gas are also to be considered. The act however does not profess to define the elements entering into the rates. It merely defines a public utility. Since appellant comes within the definition, the Commission has power to fix its rates; but in so doing, under the Constitution, it must give

appellant a reasonable return upon the fair value of all the property used and useful in rendering its public service; and the act contemplates nothing else.

But appellant's production property even falls into "(a) the conveyance of gas by pipe line." The casings in the gas wells are connected with the gathering lines in the fields, the latter with the main transmission lines, and those with the distribution lines. The gas goes a continuous journey through pipe from the bottom of the wells to the consumers' stoves and furnaces. The division into distributing lines, transmission lines, gathering lines and casings is purely arbitrary, and is not made by the act.

As to the provision "(b) for the production, transmission, delivery or furnishing of heat or light with gas," the legislative meaning might better be expressed if the clause read, "for the production, transmission, delivery and furnishing of gas for heat or light." If that clause be taken literally as written, then there is not and has never been a person or company in Oklahoma to which it is applicable. In some large cities there are heating companies which generate steam or heat water or air at a central plant and pipe the same to the radiators in

their patrons' homes, thus producing, transmitting and delivering heat; but no such thing has ever existed in Oklahoma. And if there were, it would be peculiar if the legislature should declare them to be public utilities only when they generated the steam or heated the water or air "with gas," and not when they did so with coal or oil. Also they might use the gas to generate the steam or heat the water or air, and thus come under the words "for the *production* of heat with gas," but in what way could they use gas for the "transmission and delivery" of the heat thus produced? The act must be interpreted sensibly.

If appellant's gas leases, gas wells and gathering lines and their equipment are not public service property, are not dedicated and devoted to public use, but are held in purely private ownership, then they are free from any claim of the public, and appellant is not subject to regulation in respect of them. In such event it may divert its gas to purely private purposes, and the State cannot prevent; or if it elects to furnish its gas to its public utility property, it can fix its own price therefor, and the State must allow it. The thing with which the people are to be served, however, is gas, not pipe lines

and compressor stations. The latter are worthless without a supply of gas to put through them. And it would be strange if the State's regulatory powers extend only to the pipe lines and compressors, and do not include the one essential thing with which the public is served. By analogy, the generating plant of an electric company and the water rights of a water company would not be public service property; and the Commission would have jurisdiction only in respect of the electric wires and poles and the water pipes.

The defendants say that section 4 of said act shows the legislative intent to exclude appellant's production property, and that its production of gas is the "other business" carried on "in connection with the operation of such public utility" mentioned in said section 4. The section is as follows:

"In case of the owner or operator of any public utility is engaged in carrying on any other business in connection with the operation of such public utility, the Commission may require the cost of the operation and gross revenues of such joint business to be kept in such form and manner as may be prescribed by the Commission so that the cost of the operation and gross revenues of the public utility may be ascertained."

The meaning of section 4 may be illustrated thus: Appellant owns and operates some gasoline manufacturing plants in which it extracts gasoline from natural gas, and that business is in part carried on in connection with its public utility business, in that the gasoline is extracted at some of appellant's compressor stations, after which the natural gas thus cleaned and dried is forced into the transmission lines. This is another business which appellant carries on in connection with the operation of its public utility business; and the act gives the Commission power to require, as it does, the cost of the operation and the gross revenues thereof to be kept in a form and manner prescribed by it, so that the public utility business may not be made to bear the expense of the private business. Also appellant is engaged in a small way in the oil business; and this section authorizes the Commission to require appellant, as it does, to keep and report the cost of the operation and gross revenues of its oil and gas business separately. Also, in Oklahoma many electric light companies are engaged in the ice manufacturing business, using the same boilers, engines and employees in running the ice machinery that they use in running the electric light plants. This section

authorizes the Commission to require them to report the cost of the operation and the gross revenues of each business, so that the Commission can apportion the joint expense, assigning to each business its proper part thereof. Another illustration may be found in the case of *Terminal Taxicab Co., Inc., v. Kutz et al.*, 241 U. S. 252, where a taxicab company in Washington, D. C., used the same taxicabs in both its public and its private business.

That this contention on the part of the Commission is a pure after-thought, made and asserted in an effort to repudiate its own findings and to sustain a confiscatory rate, is further shown by the fact that it is contrary to the express holding of this same Commission. Thus; in *Re Osage and Oklahoma Company et al.*, P. U. R. 1917D 426, this same Oklahoma Corporation Commission, acting under this same act of 1913, on March 31, 1917, said in the fourth, fifth and eighth syllabi:

"The annual expenditure which a natural gas utility is required to make in *developing its lease, including the drilling of new wells and the extension of the pipes*, must be taken into consideration in a rate valuation."

"The annual expenditure which a natural gas utility is required to make in *developing its*

lease should be apportioned between capital account and operating expenses."

*"Investment in producing natural gas wells is a proper capital account."*

Following that, in the case of *Re Pawhuska Oil and Gas Co.*, P. U. R. 1917D 947, this same Commission, on April 14, 1917, said in the fourth and eighth syllabi:

"The rate-making value of a natural gas lease depends upon the amount of gas produced."

"Values, revenues, and expenses of a natural gas producing system were apportioned between distributing systems on the basis of the sales to each system."

In other words, this same Commission under the same act of the legislature expressly held that the values and expenses of the production property of a natural gas company must be considered in fixing the rates. That is the uniform holding of all courts and commissions. See *Re Hope Natural Gas Co.* (W. Va.), P. U. R. 1921E 418; *Re United Fuel Gas Co.* (W. Va.), P. U. R. 1920C 583; *Clarksburg Light & Heat Co. v. Public Service Commission* (Supreme Court of W. Va.), P. U. R. 1920A 639; *Re United Fuel Gas Co.* (W. Va.), P. U. R. 1918C 193; *Re West Virginia Central Gas Co.* (W. Va.), P. U. R. 1918C 453; *Re Baker Natural Gas Utility* (Mont.),

P. U. R. 1921C 609; *Re Kokomo Gas & Fuel Co.* (Ind.), P. U. R. 1921C 390; *Re Sand Creek Gas & Oil Co.* (Ind.), P. U. R. 1921D 726; *Re Peoples Natural Gas Co.* (Ind.), P. U. R. 1920F 875; *Re Southern Counties Gas Co.* (Cal.), 1921B 705; *Town of Amherst v. Snyder Gas Co.* (N. Y.), P. U. R. 1921D 539; *Iroquois Natural Gas Co.* (N. Y.) P. U. R. 1919D 76. Prior to the filing of the answer in this case we had never heard a contrary contention even mooted.

The reason given by the Commission in its answer for having included the production property in its order, in view of the facts, is amusing. Notwithstanding it put its engineers and accountants to inventorying and appraising appellant's property in September, 1919, and notwithstanding they filed their inventories and appraisals showing in their very letter of transmissal (Pr. Tr. 344-5) that the same covered "the properties of this company used and useful in the *production*, transmission and distribution of natural gas in the State of Oklahoma," including leases and gas wells, and notwithstanding the action was formally pending before the Commission for eleven months, defendants say in their answer that the data and evidence be-

fore the Commission was not sufficient to enable it to separate appellant's production property from its transmission property, but that appellant's financial condition and its need for relief was such that, in order to afford it speedy relief, the Commission without waiting for further evidence or data hastened to make the order (Pr. Tr. 53-4). Yet, notwithstanding appellant's desperate financial condition and the urgent need of speedy relief, the Commission in this hasty order reduced the rates below those prevailing during the previous year, although during that previous year appellant had made only half what the Commission found it should make, and the Commission found in December, 1920, that appellant should have a 58c rate.

Furthermore, the evidence shows that in the summer of 1920 the Commission called appellant's vice president and general manager before it on numerous occasions and inquired what appellant was doing towards procuring an additional gas supply for the coming winter, and it directed appellant's general manager to see to it that appellant put on an intensive drilling campaign, and stated that appellant "should drill, drill, drill, and keep drilling, until it knew it had an adequate supply of gas," and

that if appellant got the gas, the Commission would see that it received an adequate return (Pr. Tr. 338-339). And on July 19, 1920, the Commission wrote appellant, stating that it had been informed that appellant was going to put on an intensive drilling campaign, and that if it omitted to do so, and a shortage of gas resulted in the winter, the Commission intended to put appellant into the hands of a receiver, and take it from under its present management and keep it so (Pr. Tr. 339). Peculiar conduct on the part of a Commission which had no jurisdiction over the producing end of the business! And then, after appellant put on the intensive drilling campaign, and after its production expense accounts had passed muster before the Commission in its rate hearing, and after appellant filed this suit, that same Commission contended that appellant should not be allowed the expense of drilling the wells the Commission required it to drill. Inasmuch as appellant's books, records, vouchers and all data in its office have at all times been accessible to the Commission and to its engineers, auditors and accountants, it is proper to inquire how long a period the Commission would want in order to separate the values of appellant's production property from its

distribution property, if it really intended and desired to do so.

Second, the evidence shows that ever since 1917 appellant has been purchasing all the gas purchasable in the territory reached by its lines, and that the amount which it could purchase was not sufficient to supply its consumers, and for that reason it has been necessary that, in addition to purchasing gas, appellant also produce the same; and the evidence further shows that with appellant both purchasing and producing all the gas it could purchase and produce, in extreme cold weather acute shortages occur (Pr. Tr. 339) for which appellant is penalized. Defendants' contention is that appellant should be allowed for the gas it produces the same price it pays for the gas it purchases in the field, and no more. The gas which appellant purchases is purchased from oil producers with whom gas is a mere by-product. They drill for oil. When they find gas instead of oil, they count it a loss and sell the gas as salvage for what they can get for it. They therefore sell it for much less than a gas company could produce the gas, because whatever they get for it is salvage to them (Pr. Tr. 388). This is illustrated by the Commission's own finding that some years ago

appellant could buy gas wells for \$100 each (Pr. Tr. 76). In numerous cases heard before the Commission oil and gas men have testified that one in the business of drilling for gas could not produce it for less than 20 cents per M. Appellant therefore says that the Commission can not require it to have and keep gas producing property, and to operate the same, for less than the actual cost of producing the gas, because oil men, with whom gas is a mere by-product, sell gas for less than the actual cost of production. If appellant could purchase all the gas it needs, the Commission would be within its rights in refusing to allow appellant, if it produced gas, any more therefor than the price at which it could buy the necessary quantity. But since appellant can not purchase the necessary quantity, and is therefore required to produce gas itself, it can not be required to keep the necessary investment for that purpose, and do the necessary drilling, casing and piping, without being allowed its actual expenses incurred in so doing and a reasonable return upon the value of the property used for that purpose. To refuse it this is to confiscate that portion of its property. If the act of 1913, therefore, expressly excluded appellant's production property, it being necessary that appellant use that property in serv-

ing the public, then the act itself would be unconstitutional.

**Defendants' contention that the test period has been too short is without merit.**

In defendants' answer they aver that insufficient time has elapsed since the effective date of order 1886 to furnish any reliable data by which to determine whether the prescribed rate is compensatory or not; that under the divisional contracts appellant suffered the leakage in the plants of the independent distributing companies, whereas, under order 1886, all gas delivered to the independent companies is paid for; that measurements have not been made for a sufficient period of time to determine the amount of such leakage; and that the time during which said rate has been in effect are warm months in normal years and have been abnormally warm during the year 1921 (Pr. Tr. 58-9).

It is not true that the gas delivered to the independent distributing companies has not been measured for a sufficient period of time to determine the leakage therein. On the contrary, for more than a year prior to the making of order 1886 all gas delivered to the independent distributing com-

panies had been measured at the city gates, and a comparison of said measurements with the amount sold by the distributing companies determined the leakage. The Commission even made a specific finding as to the amount of the leakage in each of the independent distributing plants during the year 1920 (Pr. Tr. 78-79); and it specifically found that appellant would have to have a higher rate if the independent distributing companies corrected their leakage than it would otherwise (Pr. Tr. 90-91), because it would sell them less gas. It found that the total leakage in the independent distributing plants for the year 1920 was 1,800,196 M cubic feet (Pr. Tr. 94). The evidence was that in the distributing plants owned both by the independent companies and by appellant the leakage averaged 20% of the gas delivered into them (Pr. Tr. 13, 19, 51, 126-7, 203, 208, 311).

\*We have already shown that the effect of the Commission's order was to fix an average domestic distribution rate in appellant's own distributing plants of 44.1c per M as against a rate of 48c per M prevailing during the previous year, although during the previous year appellant was paying only 6c per M for the gas it purchased as against the 10c per M

it now pays, was selling a larger quantity, and even then had a return of only half what the Commission found it should have. We have already shown also that the effect of the Commission's order was to give appellant 25c per M for domestic gas at the city gates as against 25.6c per M which it formerly received under the divisional contracts, and to give it 20c per M for industrial gas at the city gates, as against 19.8c per M which it formerly received under the contracts. We have also shown that for the six months beginning July 1, 1921, and ending December 31, 1921, appellant suffered a deficit, without charging to expense anything for amortization or depreciation, of \$93,650.97 under the rates fixed by the Commission; and that, applying the rates fixed by the Commission to the business done by appellant's production and transmission property during the year beginning November 1, 1920, and ending October 31, 1921, would have given appellant a net income of only \$299,079.81 upon property which the Commission found to have a value upon the original cost basis of more than \$14,500,000, exclusive of going concern and working capital. Also we have shown that appellant's net income from its entire property, both production, transmission and distribution, during the calendar

year 1921, at the rates actually existing during that year, was only \$534,615.95, this being upon property which the Commission valued for rate making purposes at more than 18½ million dollars; and that applying the Commission's rates to the entire business done during the year beginning November 1, 1920, and ending October 31, 1921, including both production, transmission and distribution, would have given appellant a net earning of only \$430,788.14.

Nor is it true that the weather from July 1, 1921, to December 31, 1921, was abnormal, or that appellant's sales of domestic gas during said period were abnormally small. It is true that in the summer, when appellant's consumers are not heating their homes, the sale of domestic gas is restricted to that used for cooking and incidental hot water heating purposes. This accounts for the relation between appellant's receipts in the summer and those in the winter. Thus, appellant in July, 1921, suffered a deficit of \$72,118.25; in August, a deficit of \$68,162.30; in September, a deficit of \$84,071.81 (Pr. Tr. 208). Yet, its deficit for the six months ending December 31, 1921, was \$93,650.97, it having had a net operating income for December, 1921, of \$107,988.58 (Pr. Tr. 370).

In 1921 appellant sold as much gas for purely domestic purposes as it sold in 1920 (Pr. Tr. 331). In 1919, appellant sold for purely domestic purposes 10,402,923 M cubic feet; in 1920, 9,254,030 M cubic feet, and in 1921, 9,796,564 M cubic feet (Pr. Tr. 347). The reduction in the quantity sold was in industrial, drilling and wholesale gas, appellant having sold for industrial purposes in 1919, 6,571,302 M cubic feet; in 1920, 4,434,093 M cubic feet, and in 1921, 2,011,681 M cubic feet; and having sold for drilling purposes in 1919, 3,946,106 M cubic feet, in 1920, 5,590,875 M cubic feet, and in 1921, 2,828,814 M cubic feet; and having sold for wholesale purposes in 1919, 1,056,848 M cubic feet, and in 1920, 751,788 M cubic feet, and in 1921, 636,605 M cubic feet (Pr. Tr. 347). Heretofore the domestic consumers have had the benefit in rates of the earnings made from the sale of industrial gas. It will be seen therefore that insofar as domestic gas is concerned, the price of which in the distribution plants and at the city gates is the cause of appellant's complaint, there has been nothing abnormal since the Commission made the order. It was in evidence that ordinarily the weather in Oklahoma, even in the wintertime, is fairly mild, and that extremely cold weather is unusual and abnormal, and usually exists

for only short periods; that the winter of 1920-21 was fairly representative and not abnormal; and that appellant's financial condition was not due to abnormal weather during 1921 (Pr. Tr. 331).

Reasonable test periods have been required in cases where the rate fixed was on the border line, and where there was doubt as to whether confiscation existed. The purpose of a test period is to determine, where otherwise doubt would exist, whether the rate is in fact confiscatory. But where the rate order is confiscatory on its very face, as here; where it has been proved confiscatory during a test period of six months; where the same rates applied to a larger volume of business done more cheaply during the preceding year show the rates to be confiscatory, and it is found that the volume of business done each year is progressively decreasing, and the capital investment progressively increasing, then no test period at all is required. The rule was stated by this court in *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19, 42, as follows:

"Of course, there may be cases where the rate is so low, upon any reasonable basis of valuation, that there can be no just doubt as to its confiscatory nature, and in that event there should be no hesitation in so deciding and in enjoining its enforcement without waiting for

*the damage which must inevitably accompany the operation of the business under the objectionable rate. But where the rate complained of shows in any event a very narrow line of division between possible confiscation and proper regulation, as based upon the value of the property found by the court below, and the division depends upon opinions as to value, which differ considerably among the witnesses, and also upon the results in the future of operating under the rate objected to, so that the material fact of value is left in much doubt, a court of equity ought not to interfere by injunction before a fair trial has been made of continuing the business under that rate, and thus eliminating, as far as possible, the doubt arising from opinions as opposed to facts."*

In *Atchison, Topeka & Santa Fe Ry. Co. v. Love et al.*, 174 Fed. 59, 177 Fed. 493, 185 Fed. 321, 220 U. S. 618, the freight rates complained of were made by the Commission in 1909, and the bill was filed in the United States court "in the autumn of 1909," "after the reduced fare and the rates here in question had been tested by the companies by their actual operation for many months" (185 Fed. 326), but very little, if any, more than six months so far as the freight rates were concerned.

In *City of Toledo v. Toledo Railway & Light Co.*, 259 Fed. 450, by the Circuit Court of Appeals

for the Sixth Circuit, the eighth syllabus is as follows:

"The rule sometimes followed of permitting enforcement of a reduced rate of charge by a public service corporation, as a street railroad company, for a trial period, does not require a trial period for a partial increase, where the unchallenged computations show a larger increase to be necessary."

Under the Commission's own finding of value, even the higher rates in force during the preceding year, when appellant was paying less for gas and selling more of it, were confiscatory. From April, 1920, to April 1921, appellant was getting 48c for domestic gas and 33c for industrial in its own plants (Pr. Tr. 8-52) as against 44c for domestic and 25c for industrial under order 1886. In 1920, it was paying 6c per M for the gas purchased; it now pays 10c. In 1920 it sold 4,434,093 M cubic feet of industrial gas at 33c per M, as against 2,011,681 M cubic feet sold in 1921, the most of which was at 25c per M. Since it made in 1920 only \$1,460,000 including its income tax as an expense and \$1,591,000 excluding it, at those rates and under those conditions on property found to be of a value of 18½ million dollars, can there be any question about the present reduced rates being confiscatory?

Appellant has been testing inadequate rates for years. It has been required to make additional capital investments in excess of its net earnings since 1917 in order to be able to continue to supply gas. Its directors are endorsers on more than  $1\frac{1}{2}$  million dollars of its overdue paper. Its business is a hazardous and wasting business. It has no reserve funds. It has been reduced to such a state of weakness that it can not bear further experimentation.

#### **The Leakage.**

Defendants say that the leakage in appellant's distributing plants is not less than 20% of the gas delivered into them; and in the transmission system, not less than 15% (Pr. Tr. 51, 68); that this percentage is excessive; that a leakage of 10% in the distributing systems is all the public should be required to pay for (Pr. Tr. 68); and that therefore the rates prescribed are not confiscatory and the injunction should be refused. To this appellant makes the following answers:

First. There is no such thing as a bottle tight gas plant. It is impossible to prevent considerable leakage.

Second. Percentages of leakage are mislead-

ing. If the same pressure is maintained, the same quantity of gas will leak even if appellant does not sell a foot of gas. As the quantity of gas which appellant sells diminishes, the percentum of leakage increases, though the leakage in cubic feet is constant.

Third. Appellant's leakage is not in excess of the average prevailing throughout the State of Oklahoma and throughout the United States.

Fourth. To reduce the leakage in the distributing plants to the standard stated by the Commission in its answer would cost appellant almost as much as it would to construct the distributing plants anew. In fact, the loss by leakage is not as great as the cost of correcting or preventing it; and the correction of leakage is of value only as a conservation measure.

Fifth. The leakage is not in excess of the standard heretofore prescribed by the Commission; and for it suddenly to change the standard and require appellant to put and keep its plants in condition to conform thereto without allowing it an earning with which to do so, is to take appellant's property without due process of law, in violation of the Fourteenth Amendment.

Sixth. It is impossible to reduce the leakage while the Commission requires appellant to maintain the high pressure it does require.

Seventh. If the leakage in the distributing plants were reduced, then the city gate rate would have to be raised, because the production and transmission system would sell less gas. This would only cause the order to be more confiscatory than it is.

Eighth. The rates prescribed would still be confiscatory if the leakage were as low as the Commission contends it should be.

Ninth. Since 1917 appellant has never had earnings sufficient to enable it to correct its leakage.

We shall discuss these in the order in which they are stated:

First. Samuel S. Wyer, one of the most eminent natural gas experts in the world (for his qualifications, see Pr. Tr. 202), testified in this case before the Commission and before the United States court. He said, "There is no such thing as a bottle tight plant" (Pr. Tr. 251); and that "The heaving action of the frost in moving the underground pipes tends to destroy the tightness of the joints" (Pr. Tr. 341). He further said:

“You will find in some of the lines that it freezes. I do not mean that the ground will freeze, but that you will get a lower temperature, and just as soon as you get a lower temperature in the pipe the pipe contracts, and the only way it can contract is to slip in the joints; and in the summertime when the temperature increases the pipe expands, and the only way it can expand is to slip into the inside joint, and that action will cause favorable conditions for leakage” (Pr. Tr. 341).

He testified that the conditions causing leakage are inevitable (Pr. Tr. 342). He testified that in Tulsa and Sapulpa where appellant's greatest leakage exists, the street railway tracks are not properly bonded, and the street railways are using the underground pipes of the gas systems as their return circuits instead of putting in proper bonds, “so that currents of electricity leak off of and stray away from said tracks, get on to the underground pipes of the Oklahoma Natural Gas Company, and then where such stray currents leave such pipes they produce a pitting action, called electrolysis, that soon produces holes in the pipe, thereby increasing the leakage possibilities. This is without fault on the part of the Oklahoma Natural Gas Company, and can

be remedied only by the street railway companies" (Pr. Tr. 203, 252, 341). It might be added that the Oklahoma Commission has full jurisdiction over the street railway companies, and has never turned its hand to require them to properly bond their tracks.

He further testified that slow meters cause an appearance of leakage, by not registering all the gas passing through them (Pr. Tr. 252).

He testified also that the leaks in the pipes are hard to discover, due to the fact that natural gas has no discernible odor (Pr. Tr. 253).

Second. The Commission found, and the evidence is indisputable, that there has been a progressive decline in the quantity of gas appellant could sell each year, the greatest decline being in the industrial sales, the sales having been reduced from 29 billion in 1917 to 14 billion in 1921; and appellant's industrial sales in 1921 being less than half those of 1920. At the same pressures the leakage is constant, whether appellant sells a foot of gas or not. As the volume of sales decreases, therefore, the percentum of leakage increases. But back in 1917 when appellant sold 29 billion cubic feet as against the 14 billion sold in 1921, the Commission expressly allowed a leakage in the distributing systems of 20%,

as we shall show further on. It would seem manifestly unjust, as appellant's sales of gas decrease, and the percentum of leakage increases, for the Commission to reduce the percentum it will allow.

Third. Appellant's leakage is not in excess of the average prevailing throughout the State of Oklahoma and throughout the United States.

The standard of care and diligence accepted throughout the English speaking world is that degree of care and diligence exercised by an ordinarily prudent person in the same business under the same circumstances. Mr. Sharp, appellant's vice president, testified that the leakage in appellant's distributing systems was not in excess of the amount usually and generally prevailing in all natural gas distributing systems in the State of Oklahoma (Pr. Tr. 127), and that the leakage in both the distributing systems and in the transmission system is not abnormal, and is no more than the average leakage in natural gas transmission and distributing systems all over the United States (Pr. Tr. 311).

Mr. Wyer testified before the Commission that, based on all the data he had been able to obtain, both from private and from governmental sources, the average leakage in natural gas plants in the

United States between the wells in the field and the ultimate consumers' meters, is in excess of 35% (Pr. Tr. 249); and in his affidavit made and filed in this case he said:

"The average leakage in the natural gas systems in the United States, from the well to the consumers' burner tips, is 35% of the gas annually put into said systems; and the average leakage and shrinkage in the natural gas distributing systems in the United States is 15% of the amount of gas annually delivered into said distributing systems. I have made an examination of the natural gas distributing plants owned by the Oklahoma Natural Gas Company in Okiahoma, and I have also examined numerous other natural gas distributing systems in the State of Oklahoma, and the average leakage prevailing in the natural gas distributing systems in the State of Oklahoma is considerably in excess of 20% of the amount of gas annually delivered into them" (Pr. Tr. 203).

Fourth. The correction of appellant's leakage would not be profitable from a financial standpoint, inasmuch as it would cost more than would be saved by the correction. It is of value only as a conservation measure.

In his affidavit made and filed in this case Mr. Wyer said:

"In my judgment, after a careful survey of the situation in the cities of Tulsa and Sapulpa, it would cost the Oklahoma Natural Gas Company half as much to correct the leakage in said two cities as it originally cost to construct the said distributing plants.

"The correction of the leakage in the pipe lines and distributing systems of natural gas companies serving the public is primarily a conservation measure, and is one of peculiar and primary interest to the public, for the reason that natural gas is the best, most convenient and cheapest fuel known to man; and it is to the interest of the public that the supply be conserved as fully as possible, and the period of service during which gas can be had and used be extended as long a time as possible. For that reason a natural gas company should not be required to stand uncompensated the cost of correcting the leakage in its plant; and especially is that true if the rates which it is permitted to charge and collect are no greater than would render the company a reasonable return upon the value of the property, and are not sufficient to set aside in addition to such return an earning for the purpose of correcting the leakage, taking care of depreciation, and amortizing the property" (Pr. Tr. 203).

In his testimony given before the Commission, Mr. Wyer said:

"Then you undoubtedly have a large amount of pipe where the joints are leaking, in fact, it would be my judgment, based not on local investigation,

but on the general experience I have had in a large number of other towns—and we have gone over this thing in several hundred towns—it will probably be necessary—and this is the seriousness of it with your fine paved streets—to open the bell holes and cut into these paved streets, and get into these pipes and put on collar leak proof joints before you can get the leakage down where it ought properly to be. That is the practical aspect you will have to face. You may get to a point where the cost of cutting through the fine pavements you have and restrictions the city would set up, naturally, with respect to cutting through these pavements, will be so high as not to make it worth while to get the leakage down to as low a point as it could be gotten under other circumstances” (Pr. Tr. 253).

And in Mr. Sharp’s affidavit he testified as follows:

“In the cities of Tulsa, Sapulpa, Claremore and Haskell, the streets and alleys are, for the most part, paved, and the Oklahoma Natural Gas Company’s pipes and mains are covered with paving, and to take up said pipes and undertake to correct the leakage therein would cost far more than could be saved by saving said leakage. To open the pavement and correct the leakage in the Oklahoma Natural Gas Company’s distributing system at Tulsa would cost almost as much as it would to construct a new distributing system” (Pr. Tr. 127).

The District Court of the United States for the District of Kansas had this question before it in the case of *Landon et al. v. Court of Industrial Relations*

of *Kansas*, 269 Fed. 433, and the 16th syllabus in that case is as follows:

"Since the reduction of leakage in a natural gas distributing plant is a matter of conservation in the interest of the consumers, who will be required to use other fuels when the supply of natural gas is exhausted, it is not unreasonable to include in the rate they must pay a charge for bringing the plants to a higher standard of efficiency, and thereby reducing the leakage, so long as natural gas under such rates is still cheaper than any other available fuel."

Appellant's total sales of gas in 1921, excluding Claremore, Inola and Ramona, were 13,840,368 M cubic feet (Pr. Tr. 371). Of this amount 2,028,814 M were sold in the field for drilling gas, and never went into the distributing systems (Pr. Tr. 371). This left 11,011,554 M cubic feet sold by appellant and distributed for domestic and industrial purposes through the various distributing systems, including both appellant's and those of the independent companies. Of this amount appellant sold in its own distributing plants for domestic purposes 3,449,196 M cubic feet, and for industrial purposes 703,233 M cubic feet, making total sales through appellant's distributing plants, excluding Claremore, Inola and Ramona, of 4,152,429 M cubic feet (Pr. Tr. 371). With a leakage of 20% in appellant's distribut-

ing plants, then in order that those plants might sell 4,152,429 M cubic feet it was necessary that they procure from the production and transmission property 5,190,536 M cubic feet, and the leakage in feet would be 1,038,107 M. If appellant could and should eliminate this leakage entirely, the only difference would be that it would have to buy or procure 1,038,107 M cubic feet of gas less than it does have to procure. At 10c per M this would come to \$103,810.70; and that is the only difference it would make in appellant's operations, except that the production and transmission property would be selling less gas and its rate would have to be higher. At 20c per M the leakage would come to \$207,621.40.

If appellant should reduce its leakage to the 10% contended for by the Commission, then, in order that its distributing plants might sell the 4,152,429 M cubic feet, it would be necessary that they procure from appellant's production and transmission property 4,613,810 M, and the leakage would be the difference between the two, namely, 461,381 M cubic feet. Appellant's production and transmission property would have to purchase or procure, therefore, 461,381 M cubic feet of gas less, which at 10c per M, would come to \$46,138.10, and at 20c per M would

come to \$92,276.20. Yet, in order to make this saving, under the evidence, appellant would be required to expend upon its distributing plants at least half of the original cost of the plants, which the Commission found to have been more than \$2,000,000. And after that saving had been made, because the production and transmission property was no longer selling as much gas as theretofore, its rates would have to be increased. It is therefore evident that the law of diminishing returns applies, and that the reduction of the leakage below that obtaining is important only from the standpoint of conservation, and that so far as financial considerations are concerned, nothing would be gained either to appellant or to the public.

Fifth: In defendants' answer it is said:

"The said Commission has never in any cause in which the said question has arisen permitted any compensation for leakage in excess of 10% in local distributing plants" (Pr. Tr. 69).

It is difficult to understand why a public official body, charged with the affirmative duty of doing justice, and under the obligation of being frank, open and candid with the United States Court, would make such a statement in view of the facts. On March 31, 1917, in the case entitled *Re Osage &*

*Oklahoma Co. et al.*, reported in Public Utility Reports, 1917D 426, the Oklahoma Corporation Commission made order No. 1255 (Pr. Tr. 211-312), and the sixth syllabus of that order is as follows:

“An allowance of 20% was made for shrinkage of natural gas through the distributing system.”

In the order the Commission said:

“An element of the cost of gas to which there was some dispute was the shrinkage to be allowed. The testimony of witnesses showed that shrinkage in Oklahoma cities had amounted to anywhere from 15% to 35%. Witness for the city testified that, in his observations in Ohio and elsewhere, the shrinkage ought not to be more than 12 per cent. The Kansas Commission and the Federal court in Kansas allowed from 20 to 30 per cent. (See *Landon v. Lawrence*, P. U. R. 1915E 763.) Paragraph 5 of this case reads as follows:

“ ‘In fixing the amount to be allowed to cover leakage and waste of natural gas through a distributing system, 30 per cent of the gas delivered was allowed in case of distributing companies marketing annually 10,000 M cubic feet of gas or less; 25 per cent in case of companies marketing annually more than 10,000 M cubic feet, and not exceeding 20,000 M cubic feet, and 20 per cent in case of companies marketing annually more than 20,000 M cubic feet, such percentages being an average annual allowance requiring an annual adjustment.’ ”

Then after quoting further from the decision of the Kansas Public Utilities Commission, the Oklahoma Commission said, "The Commission finds that an allowance of 20% should be made for shrinkage at the Tulsa plant." (See also Pr. Tr. 311.) The Osage and Oklahoma Company, to which that order was applicable, is now a part of the Oklahoma Natural Gas Company.

Following that, on April 14, 1917, in the case entitled *Re Pawhuska Oil & Gas Company*, reported in Public Utilities Reports 1917D 947, the Oklahoma Corporation Commission said:

"The city has allowed for the item of shrinkage 17.5 per cent; the gas company, 20 per cent of the amount delivered to the distributing plant. This is of course only an estimate, as there is no way of computing shrinkage of gas sold to consumers without metering.

"Evidence taken in the other cases shows that shrinkage has amounted to from 15 to 35 per cent. The Kansas Utility Commission has allowed from 30 per cent for small distributing plants to 20 per cent for the largest distributing plants. Twenty per cent is not an unfair allowance until a test is made, after meters have been installed."

The Commissioner who verified the answer in this case participated in the making of the foregoing

orders. Those orders constituted the last pronouncement of the Oklahoma Commission upon the question of leakage, insofar as we are informed, until the making of the order herein complained of. Now, however, without warning, without allowing any earning for bringing appellant's plants to a higher standard, following a year's business in which appellant made only half of what the Commission finds it should have made, and in a year in which appellant made less than one-fifth of what the Commission found it should make, in an order reducing rates below those prevailing during the previous year, though the volume of business done has fallen off six billion cubic feet, and the cost of gas had increased 66 2-3%, the Commission in addition to the reduction in rates, also raises the standard of leakage theretofore fixed, and says it will allow a leakage of only 10% in appellant's distributing plants, though it had expressly allowed 20% when appellant was selling twice the gas it now sells.

The Kansas Commission attempted the same thing, and its order was enjoined by the District Court of the United States for the District of Kansas, in *Landon v. Court of Industrial Relations*, 269 Fed. 433. It will be remembered that the Oklahoma

Commission, in its orders allowing a leakage of 20% in the distributing plants, quoted from the orders of the Kansas Commission allowing a leakage ranging from 20 to 30 per cent. On August 18, 1920, the rates prevailing with the Kansas Natural Gas Company in Kansas were 80c per M, and the Kansas Commission made an order reducing the amount of leakage allowed in the plants. In *Landon v. Court of Industrial Relations, supra*, the opinion was by Judge Booth, and the 9th, 13th, 14th, 15th and 16th syllabi are as follows:

9. "The 80-cent rate, which the Kansas Court of Industrial Relations permitted companies distributing natural gas to charge, held unreasonable, unjust, and confiscatory, where the evidence showed that the rate would not produce a fair return on the valuation found by the commission, without any allowance for the expense of bringing the distributing plants to a new standard of efficiency required by the same order, and did not show that the rate would be reasonable after the plants were brought to the new standard."

13. "A gas company, which is ordered to bring its plant to an increased standard of efficiency, cannot be required to take the funds for that purpose from its accumulated depreciation reserve, which would be in effect confiscatory of the property."

14. "The funds necessary for repairs to bring a gas distributing plant to the new stan-

dard of efficiency required by the Court of Industrial Relations should not be raised by borrowing, which would add to the capital valuation of the plant, on which the company would be entitled to reasonable returns during its future operations."

15. "Where a gas-distributing plant was deficiently constructed in the first place, or was not kept up to the recognized standard of efficiency, and earnings which might have been devoted to that purpose were diverted, the distributing companies can be penalized to that extent in raising the funds to bring their plants to a new standard of efficiency; but it would be unreasonable, within Laws Kan. 1911, c. 238, section 21, to go beyond that and throw upon them the whole burden of bringing their plants up to the new standard."

16. "Since the reduction of leakage in a natural gas distributing plant is a matter of conservation in the interest of the consumers, who will be required to use other fuels when the supply of natural gas is exhausted, it is not unreasonable to include in the rate they must pay a charge for bringing the plants to a higher standard of efficiency, and thereby reducing the leakage, so long as natural gas under such rates is still cheaper than any other available fuel."

In that case the question of the relative cost of bringing the plants to the standard ordered and the saving thereby made was gone into carefully, and it was found that the annual saving in the cost of procuring the gas that leaked would be \$82,542.00;

but it was found that it would cost that company from \$351,000 to \$378,000 to bring the plant to the standard, and that the cost of maintaining it at that standard would exceed the usual maintenance cost by \$30,000 per year; and Judge Booth therefore found that the reduction in leakage was a matter of conservation rather than a matter of reducing the company's expenses. In the opinion the court said:

“With what funds shall the distributing companies place their plants upon the standard of leakage required by the order of August 18, 1920? Such funds cannot be derived from an accumulated depreciation reserve, for the reason that the evidence shows that there is no such fund in actual existence; nor, if there were, would it be proper to take the funds accumulated for that purpose to make the repairs necessary. Such a diversion of funds from the depreciation reserve would be in effect confiscatory of the property of the distributing companies. The required funds cannot be taken from net earnings, for, in case of several of the applicants, the net earnings are not sufficient at present for the purpose, even eliminating all questions of return upon valuation.

“Nor is it reasonable, in my opinion, to demand that the funds to make the required repairs be raised by borrowed capital. Such funds so raised would necessarily have to go into the capital account. But the evidence shows that practically 90 per cent of the work necessary to be done to bring the distributing plants up to the required standard consists in repairs,

and not in new construction. There is no justification, therefore, for putting such expense into capital account, thereby making the public pay a rate indefinitely on such addition to the capital account.

“Of course if any plant was deficiently constructed in the first place, to the extent of that deficiency the company must look to itself for financial help. If during the past seven years the distributing companies have not kept their plants up to the standard of leakage tacitly authorized, and if earnings which might have been devoted to such purpose have been diverted, the distributing companies should be penalized to the proper extent therefor. And if money specifically provided to the distributing companies for the purpose of reducing leakage has been by them diverted in whole or in part to other purposes, the distributing companies should be penalized therefor to the proper extent. But to go far beyond this, and throw upon the distributing companies the whole burden of bringing their plants up to the new standard ordered, reasonable and proper though that standard be, is in my judgment ‘unreasonable,’ in view of the unusual, but vital, facts of the situation, within the meaning of that term as used in section 21, chapter 238, Laws Kan. 1911.

“It will doubtless be said that, if the foregoing views are correct, they point to the conclusion that the new standard of leakage can properly be attained only by some increase in the present rate. Be it so. Such conclusion is in my judgment both just and reasonable. As has been already said, the new standard of leakage is in the interest of conservation of gas—

a matter in which the consumers are vitally interested, and it is not unreasonable that they should pay in part at least the cost of effecting the change. It may not be amiss to repeat what was said two years ago, at the time of the entry of the 80-cent rate order:

“ ‘It may be said that this increase of rates is really making the public pay the expense of reducing the leakage. In a way this is true, and such a course, under some circumstances, might be open to objections; but such is not the case here. For some years the public has been receiving service from the distributing companies at a rate too low to give these companies a fair, reasonable return, with the natural result that repairs and replacements have not received sufficient attention. Secondly, the rates now established are still much below what the natural gas is intrinsically worth, when compared with other fuel which might be substituted.’

“My conclusion on the present applications is that portion of the order of August 18, 1920, of the Court of Industrial Relations which denies the applications of the distributing companies to increase the present rate, and fixes the present 80-cent rate as reasonable, just, and fair is unreasonable and confiscatory, and the enforcement of the same should be enjoined.”

Appellant purchases gas in northern Oklahoma in competition with this same Kansas Natural Gas Company, which in August, 1920, was getting 80c per M for its gas, and now gets more.

In view of the facts, appellant says that for the Commission now to suddenly change its standard of leakage, and require appellant to put and keep its plant in condition to conform thereto, without allowing it an earning with which to do so, is to take appellant's property without due process of law, in violation of the Fourteenth Amendment.

Sixth. Leakage is always proportioned to pressure, and the pressures which the Commission requires appellant to maintain in its distributing plants are such as to prevent it from bringing its leakage to the 10% standard, whatever expenditure of money it might make. The Commission requires appellant to maintain a pressure of not less than four ounces in all parts of its distributing systems, under penalty of discounting its bills when the pressure falls below that figure. If the pressure is below four ounces and not below three, it permits appellant to collect only three-fourths of its bills. If the pressure is below three ounces and not below two, appellant is permitted to collect only half of its bills. If the pressure is below two ounces and not below one ounce, appellant is permitted to collect only one-fourth of its bills. And if the pressure is below one ounce, appellant is permitted to collect no part of

its bills (Pr. Tr. 312, 332-3). That order was recently affirmed by this court.

In that connection, Mr. Wyer testified before the Commission in this case as follows:

“Q. All of the conditions causing leakage are inevitable, and the leakage can be prevented only by taking continual care of those conditions as they arise.

A. Eternal vigilance is the price of a tight gas plant.

Q. And in order to do that the company has to earn the money with which to do that?

A. Certainly.

Q. I want to ask you then, what do you say about a company that spent almost a million dollars in 1917, almost nine hundred thousand dollars more than it earned, has spent more each year since and including 1917 than it has earned, in undertaking to furnish gas, what would you say as to its ability to undertake to correct that leakage?

A. Why, the company would be unable to carry on extensive leakage remedial measures under those conditions.

Q. The correction of that leakage ought to be taken care of in a depreciation account, ought it not?

A. No, I would say it should be entirely separate and a straight allowance in your operation budget.

Q. For taking care of that leakage?

A. Yes, sir.

Q. Then, Mr. Wyer, I want to ask you this. You take a natural gas company that has been operating since 1907, and ran say until 1912 without paying any dividend, for a number of years paid only about two per cent, then I think for a year or two paid four per cent, and for the last three years paid eight per cent, and has never been permitted to earn or set aside any sum whatsoever for either depreciation or amortization, what you you say as to the ability of that company to correct leakage in its plants?

A. Impossible.

Q. Now, as to the amount of leakage as compared with the leakage in an artificial gas system, I believe you said the leakage in an artificial gas system was about 100,000 cubic feet per year for every mile of three-inch line.

A. Correct, in a well maintained system.

Q. In an artificial gas system what is the usual pressure maintained?

A. Expressed in terms of ounces, usually about one and one-half ounces.

Q. If you double that pressure you increase the amount of leakage, do you not?

A. Yes, sir.

Q. And every time you increase the pressure you increase the amount of leakage, do you not?

A. Yes, sir.

Q. In a natural gas system where they contend they are entitled to a four ounce pressure at the burner tips could the leakage possibly be brought down anywhere approximating that in an artificial gas system?

A. Not until the pressures are lowered. There is another feature that apparently all of you have lost sight of, and that is the lowering of the pressure is not only desirable from the viewpoint of more efficient utilization, but if the gas company maintains only low pressure at all times in its low pressure distributing system, and if it has a leakage, and no plant can be maintained without some leaks, and the gas gets out, if you have a pressure of only an ounce or an ounce and a half, the resistance of the soil will be such, the average soil, even though you have an actual opening between the inside of the pipe and outside of the soil, that the soil will hold the gas in and gas will not come out; but if you raise that pressure to in the neighborhood of four or five ounces, the pressure will then be high enough to force the gas out from the soil and into the atmosphere and that is one of the big fundamental reasons why the lowering of pressures is so important from the viewpoint of conservation of natural gas.

Q. The attitude here is that the pressure must be maintained high.

A. That is fundamentally wrong.

Q. And in addition to that, there must be no leakage?

A. Impossible.

Q. Now, are those two to be reconciled?

A. They cannot be reconciled."

(See also Mr. Sharp's affidavit, printed transcript 312.)

Seventh. Appellant does not contend that the leakage should not be kept down to the lowest possible point at which the financial\*and operating conditions of the company will permit it to be kept. This, however, is a rate case, and not a conservation case. If the leakage in the distributing plants is reduced, then the production and transmission property will sell to the distributing plants even a smaller quantity of gas than it has been selling, and the result would be that the city gate rates would have to be increased still more. The result would be to make the present order even more confiscatory than it is. This is shown by the Commission's own order, where it found that if the independent distributing companies corrected their leakage then appellant's production and transmission property would have to have a city gate rate of 42.1c per M if it was allowed 10% for return and 10% for depreciation and amortization, but that if they did not correct their leakage then the city gate rate would be slightly in excess of 38c per M (Pr. Tr. 90-1).

Inasmuch as appellant's distributing plants are all treated as though they were separate corporations buying their gas from appellant's production and transmission property, the same result would follow if the leakage was eliminated in appellant's distributing plants.

Eighth. The rates prescribed would still be confiscatory if the leakage were as low as the Commission contends it should be.

We have already shown that appellant's total sales of gas through its distributing plants, both domestic and industrial, excluding Claremore, Inola and Ramona, during the year 1921, was 4,152,429 M cubic feet; and that, with a leakage of 20%, it was necessary that appellant's distributing plants procure from the production and transmission property 5,190,536 M cubic feet, in which event the leakage would be 1,038,107 M cubic feet. Eliminating the leakage would not create any greater demand for the gas; and the only result would be that appellant would be required to procure 1,038,107 M cubic feet of gas less than it does procure, which at 10c per M would come only to \$103,810.70, and at 20c per M would come only to \$207,621.40. If we add those sums thus saved to the \$299,000 which appellant's

production and transmission property earned during the year 1921, it is very evident that still the return on the 14½ million dollars which that property originally cost would be confiscatory; and, in addition to that, as the quantity of gas sold by the production and transmission property decreases, the amount it makes also decreases. The foregoing is on the assumption that appellant's distributing plants could eliminate their entire leakage, which is impossible at any pressure and by the expenditure of any amount of money. We have already shown that if the distributing plants bring their leakage to 10% contended for by the Commission, then the saving, reckoning the cost of the gas to the production and transmission property at 10c per thousand, would be only \$46,138.10, and at 20c per M, would be only \$92,276.20.

It is evident therefore that the rates would still be confiscatory.

Ninth. Since 1917 appellant has never had earnings sufficient to enable it to correct its leakage (Pr. Tr. 127).

In 1917 appellant's net earnings, and those of all its constituent companies amounted to \$720,-

116.70 (Pr. Tr. 326); but in that year appellant was required to and did expend \$974,473.09 of new money furnished by its stockholders in building new lines to new fields (Pr. Tr. 16, 121).

In 1918 appellant's net earnings were \$1,225,753.52, but during that year it was required to and did expend the sum of \$1,632,004.72 in building new lines to new fields and in building compressor stations (Pr. Tr. 16, 121). In 1918 its property was appraised at more than 20 million dollars (Pr. Tr. 346).

In 1919 appellant's net earnings were \$1,343,579.33 (Pr. Tr. 324) but in that year appellant was required to and did expend \$1,419,667.39 in building new lines to new fields and in erecting compressor stations (Pr. Tr. 16, 121).

In 1920, complainant's net earnings, exclusive of its Federal income tax, were \$1,460,738.02, and including its Federal income tax, were \$1,581,748.02; and in the same year appellant was required to and did build new lines to new fields and erect compressor stations, costing \$1,528,195.81 (Pr. Tr. 16, 121-2).

These additions were not for the purpose of enlarging the business, and the net returns were with-

out charging to expense anything for amortization or depreciation.

The money used in building new lines to new fields could not be used for the purpose of correcting leakage. Correcting the leakage would not obviate the building of the new lines, because it was 100% of the supply that was to be obtained rather than 10% that was to be saved. .

With respect to the leakage in appellant's transmission system, it is less than the average ordinarily obtaining. Mr. Wyer says that the average leakage in the United States between the wells and the consumers' burner tips is 35%, of which 15% is in the distributing systems, leaving 20% in the transmission lines. The leakage in appellant's transmission lines is only 15%. When it is considered that these transmission lines are large lines 8, 10, 12, 14 and 16 inches in diameter, hundreds of miles long, through which the gas is forced with compressors at pressures running from 225 to 300 pounds per square inch, as compared with a pressure of four ounces per square inch ordinarily maintained in the distributing systems, it can readily be seen that the leakage in the transmission lines is not excessive; and we do not understand that the Commission seri-

ously contends it is so. Not all of the unaccounted for gas in the transmission lines, however, is leakage. Appellant owns and operates eight compressor stations, all of which are operated with internal combustion gas engines, which require for their operation in excess of a billion cubic feet of gas annually. This gas is in fact not leakage, but properly a part of appellant's operating expenses. Nevertheless it is not charged to operating expenses, but is included in the leakage in the transmission lines (Pr. Tr. 338).

Mr. Wyer, discussing the question of leakage from purely a conservation standpoint, and comparing natural gas with artificial gas, said that the leakage of a million M cubic feet of natural gas, on the basis of the consumers' being required to pay \$1.25 per M for artificial gas when natural gas is gone, and therefore on the basis of natural gas being worth \$2.50 per M, means an economic loss of \$2,500,000 (Pr. Tr. 249-250); and defendants have seized upon that statement and have urged it as a ground for denying the injunction.

To Mr. Wyer's statement might be added the fact that at 10c per M, the purchase price in the field, instead of \$2.50 per M, the million M cubic feet would come only to \$100,000; and at 25c per M, the

industrial rate, it would come only to \$250,000; and at 44c per M, the average domestic rate appellant receives, it would come to \$440,000.

If we are to consider the matter here from the conservation standpoint, then the Commission should give appellant the \$2.50 rate for gas before it cites that price to show the enormity of the loss. So long as appellant is allowed a domestic rate of only a little more than one-sixth of what the public will have to pay for a substitute when natural gas is gone, arguments from the conservation standpoint on the basis of the intrinsic value of the gas can not come with good grace from the Commission or the public. Why should appellant spend an enormous sum in an effort to save a relatively small quantity of gas to sell at less than cost? Since conservation primarily is in the interest of the public, why should appellant be required to bear the whole burden of it alone and uncompensated? In measuring appellant's obligation to conserve the gas, the gas must be treated as worth just what appellant pays for it on the one hand and what it gets for it on the other; and the relation between the cost of conserving and the saving thereby made must be considered.

Anything more than this is solely in the interest of the public and should be paid for by the public.

A large part of the leakage in the distributing systems is in the consumers' own service lines, which run from the street curb into their homes, and which are installed and owned by the consumers; and they will not even correct that leakage.

Moreover, the United States Bureau of Mines and the Bureau of Standards both say that the consumer wastes 80% of the gas delivered to him by burning it in unadjusted and inefficient appliances, and Mr. Wyer testified to that fact before the Commission in this case. The gas companies and the Bureau of Mines have carried on public demonstrations in Oklahoma undertaking to correct this, but so far the results have been negligible.

For appellant's reply to defendants' contention respecting the leakage in Tulsa, see Mr. Sharp's affidavit (Pr. Tr. 340-3).

**There has been no decline in the price of gas in the field.**

In the Commission's order, after finding that appellant was being required to pay 10c per M for the gas it purchased in the field, it is said that since

the close of the case the price of gas at the mouth of the well had unquestionably declined, until at the present time it could be purchased for at least one-third less than at the time of the hearing. There was no testimony to that effect before the Commission, and the Commission did not purport to base that finding upon evidence, but stated that it had an independent knowledge of the fact (Pr. Tr. 95).

Inasmuch as this finding is of a supposed fact existing only after the case was closed, and as appellant had no knowledge of the Commission's intention to incorporate any such finding, it of course had no opportunity to introduce evidence to refute it. The price of gas has not declined in the field one cent; on the contrary the tendency has been toward an increase. That fact is shown in the affidavit of Mr. Sharp (Pr. Tr. 335), in which he states that appellant has had no opportunity to buy any gas since October, 1920, at less than 10c per M, except gas of an inferior quality from one well; and that appellant has had to pay as high as 15c per thousand for gas on its Enid line, and has lost some gas for which it was paying 10c because other parties bid more. And the Commission offered no evidence before the court in refutation of that fact.

Concerning the right of the Commission to make findings of fact upon the independent knowledge of the Commission, this court said in *Interstate Commerce Commission v. Louisville & Nashville Railroad Co.*, 227 U. S. 88:

“But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the Government’s contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our Government. It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution’s condemnation of all arbitrary exercise of power.”

Further on the court said:

“The Government further insists that the Commerce Act (36 Stat. 743) requires the Commission to obtain information necessary to enable it to perform the duties and carry out the objects for which it was created, and having been given legislative power to make rates it can act, as could Congress, on such information, and therefore its findings must be presumed to have been supported by such information, even

though not formally proved at the hearing. But such a construction would nullify the right to a hearing—for manifestly there is no hearing when the party does not know what evidence is offered or considered and is not given an opportunity to test, explain or refute. The information gathered under the provisions of section 12 may be used as basis for instituting prosecutions for violations of the law, and for many other purposes, but is not available, as such, in cases where the party is entitled to a hearing. The Commission is an administrative body and, even where it acts in a quasi-judicial capacity, is not limited by the strict rules as to the admissibility of evidence which prevail in suits between private parties. *Inst. Com. Comm. v. Baird*, 194 U. S. 25. But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown but presumptively sufficient information to support the finding. *United States v. Baltimore & Ohio S. W. R. R.*, 226 U. S. 14."

### **How the New Lines to New Fields Should be Treated.**

The Commission finds that annually during the last four or five years appellant has been required to expend as much as or more than its net income has been in new lines to new fields, not for the purpose of increasing the amount or volume of its business or taking on new consumers, but merely for the purpose of furnishing a constantly diminishing quantity of gas to the same patrons it was already obligated to serve.

If the building of those new lines should be treated as an expense of furnishing those same patrons with gas, then appellant has operated at an actual deficit each year since and including 1917. Mr. Wyer in his affidavit (Pr. Tr. 206) says that in his judgment appellant's capital account should not be further pyramided, and that whatever it is required to expend in the future in lines to new fields and in new compressor stations to serve its same customers with a decreasing supply of gas, should be treated as a part of the expense of serving those customers, and thus wiped out each year.

Touching this matter Judge Sanborn, of the Eighth Circuit Court of Appeals, in *Landon et al. v.*

*Public Utilities Commission of Kansas*, 234 Fed. 152, said:

"A supply of gas adequate to the reasonable needs of the customers of the natural gas company for domestic lighting, cooking, and heating is the real desideratum in this case. Without it no rate will be compensatory. The company now has no such supply. It cannot get such a supply without adequate extensions to its pipe lines. It can make such extensions by the expenditure of a reasonable amount of money. It cannot make such extensions without such money, and it cannot get the money to make them without compensatory rates for the gas it procures and sells. Any rate which will not compensate it for making the necessary extensions to secure such a supply, for paying its other necessary expenses of operation and a reasonable income on the value of its property, is unavoidably confiscatory, because without these extensions it must lose its customers, cease its operation, and the value of its property must greatly decrease."

And upon final hearing in the same case, 242 Fed. 658, Judge Booth said:

"Allowance has been made for salvage at the end of the five-year period—15 per cent on the present valuation of \$7,000,000 and 50 per cent on the extensions and additions immediately necessary. The estimated cost of these immediate changes has been reduced by the value of new pipe recently bought by the receiver and not yet used, amounting to something over \$200,000. The balance of the amount re-

cently expended by the receiver under order of court, amounting to over \$400,000, though unsuccessful as an investment, must nevertheless be provided for, either by being placed in capital account and amortized, or by being charged to maintenance; proper allowance to be made in either case for salvage. This would increase the deficit above shown.

“It is further to be noted that in the foregoing re-revised table no allowance is included for extensions after the large initial one. This omission is not due to a conclusion that no such expenditure would be necessary. On the contrary, the testimony shows that it would be necessary; but from the evidence I am unable to deduce any definite figure as to amount. Whatever sum would be necessary to be expended would, of course, increase the deficit to a still greater extent.

“Extensions to new gas pools do not stand on the same footing as new branch lines of railway. The one is normally short lived; the other is normally enduring. The former are usually necessary to maintain the present business; the latter are usually built for the purpose of getting new and additional business. Whether extensions in such a business as the natural gas business should be charged to capital account and amount (less estimated salvage at the end of the life of the field) be amortized, or whether they should be charged immediately to maintenance (subtracting, however, from each installment of investment an amount for estimated salvage), makes very little difference, provided a return is allowed on the capital actually invested during the time it is tied up. In the

first instance, however, the feasibility of attracting capital into the extensions may be a determining factor as to how the account should be made up."

It is immaterial whether future extensions to new fields be counted as expense, and therefore never added to the capital account at all, or whether they be considered as capital and amortized during the probable estimated life of the field. So far as the order of the Commission is concerned, notwithstanding the evidence before it and its findings as to the exhaustion of every gas field in a year or two, and the consequent necessity of amortizing the lines (with an allowance for salvage value), the Commission made no provision for new lines at all; it neither treated them as expense, nor did it provide for amortizing them. It expects appellant to continue, as it has done for the last five years, to invest all its earnings and more in new lines, with the result that the stockholders will lose their property when the gas is finally exhausted. There is no difference on the one hand between putting the earnings directly into new lines, and, on the other, paying the stockholders dividends each year and immediately having them subscribe and pay for that much additional stock in order to raise a fund for the building

of new lines. In either event the stockholders are deprived of a return on their investment, and faced with the ultimate loss of their principal.

**The contention that a large part of appellant's property has become useless in its public service.**

Defendants, in their answer, allege that large elements of appellant's property have become useless for the public service, that many gas fields to which it built its lines have been exhausted and rendered obsolescent, and that the same were included in appellant's inventories and appraisals (Pr. Tr. 55, 64); that a large amount of appellant's capital stock was issued for 10,000 acres of leases in what was known as the Hogshooter district, which is exhausted, and against which have been charged only \$508,751.79 for removals (Pr. Tr. 56).

One naturally wonders why the Commission did not mention those facts in its order, and why, with knowledge of those facts, it made the findings it did make. The averment is not true. The inventory and appraisal of appellant's property by H. E. Musson, appraisal engineer, comprised only property then used and useful in rendering appellant's public service, and did not include any property which had become useless, and the said Musson so testified before

said Commission (Pr. Tr. 320). See also Musson's affidavit, Pr. Tr. 145. The inventory and appraisal made by the Commission's own engineer, M. E. Durham, included only property then used and useful by appellant in rendering its public service, and the said Durham so testified before said Commission, and stated that if he had included the labor items upon the 55 miles of appellant's 12 and 16 inch pipe line from the Cement to the Walters field, and had placed in his inventory and appraisal the proper provisions for intangibles and overheads, there would have been very slight, if any, difference between his appraisal and that of Mr. Musson (Pr. Tr. 321).

In addition to that appellant's books and records have at all times been open to the inspection and examination of the Commission, its engineers, auditors and accountants; and it would seem that it would point out the property that has become useless, and would not have included same in its order and findings, if there were any such.

Respecting this matter Mr. Sharp, appellant's vice president, said in his affidavit (Pr. Tr. 321-2):

"Affiant further states that the exhaustion of a gas field does not always render useless the pipe lines in said field. For instance, formerly the Oklahoma

Natural Gas Company obtained natural gas out of what was known as the Glenn Pool field. Its main pipe line running from Tulsa to Oklahoma City passed through said Glenn Pool field. That field has been exhausted for some years, but the pipe line which passed through said field is still used and useful in transporting gas between Tulsa and Oklahoma City. The gathering lines in said field, upon the exhaustion of the field, were taken up and used in other gas fields. As another example, the Oklahoma Natural Gas Company built a pipe line from Oklahoma City southwest to what was known as the Cement gas field 57 miles from Oklahoma City. That field has become exhausted; but, the said pipe line did not thereby become worthless; but on the contrary the Oklahoma Natural Gas Company extended the said line still farther southwest into what is known as the Walters and Duncan fields, a distance of 50 miles south of Cement.

“In addition to that, complainant has many transmission lines and gathering lines running from its main lines into gas fields which originally produced large quantities of gas, but the production in which fields has fallen off to where the same is inadequate to supply that proportion of complainant's needs for gas which it formerly supplied, but yet the amount of production in said fields is still too large to justify complainant in removing its lines. For example, the complainant built a pipe line into the Morrison gas field, which line cost \$825,000.00. At

the time complainant built said line into said field there was an open flow volume of 90 million cubic feet of gas per day developed in said field. Today the open flow volume in said field is approximately only 13 million cubic feet of gas per day. This reduction in the volume of gas obtainable in the Morrison field necessitated the building of new lines to other fields; but to render efficient service complainant cannot forego the 13 million cubic feet of gas still obtainable in said field, and therefore cannot remove its pipe line in said field, although it has removed a branch of said line and relaid it into what is known as the Hoffman field. The same condition is true in the Cushing field and in many other fields. Should plaintiff abandon those fields that are now making small quantities of gas, complainant's supply of gas would be wholly and totally inadequate.

“In addition to that, when a portion of a pipe line is removed, as was done in the Morrison field, and as has been done between Tulsa and Claremore, that pipe is relaid to other fields, and in relaying the pipe, complainant is faced with the necessity of acquiring new rights of way, of spending money in taking up the pipe, of transporting it to new fields, and of digging its ditches and laying the pipe in said new fields. The necessity for using all the gas available has prevented complainant from laying lines to new fields merely by the removal of old lines, and has necessitated the constant purchase and laying of lines out of new pipe altogether. In all cases

where complainant's own leases have been exhausted they have been charged off, and in all cases where a pipe line has been removed, it was charged off, and when the same was relaid the investment was put back. These facts have been shown to the Corporation Commission of Oklahoma in hearing after hearing, and were and are well known to said Commission.

"This affiant states that it is not true that included in the valuation of complainant's property are many millions of dollars paid for large acreage of leases in wildcat and undeveloped territory; on the contrary, Durham's inventory and appraisal contains only \$451,415.42 for unoperated leases; and Musson's inventory and appraisal on the original cost basis includes only \$437,828.64 for unoperated leases."

Respecting the Hogshooter leases, Mr. Sharp said in his affidavit (Pr. Tr. 328-9):

"Affiant states that it is true that a portion of the stock of the Oklahoma Natural Gas Company was issued in payment for leases in what is known as the Hogshooter field; but the complainant received also numerous other leases besides those located in the Hogshooter field. The leases located in the Hogshooter field at that time had a developed open flow production of natural gas in excess of a billion cubic feet and complainant operated said property and sold said gas, and the proceeds there-

from went into complainant's business and into the construction of pipe lines and the development of other fields. At about the same time there was a large amount of gas developed near Mounds, Oklahoma, which complainant used for its pipe lines.

"Complainant's Hogshooter leases were charged off many years ago, and have never entered into complainant's inventories and appraisals in any rate hearing which has been had before the Corporation Commission."

Again (Pr. Tr. 343-4) Mr. Sharp said:

"For example, it is contended and is a fact that the Oklahoma Natural Gas Company at one time acquired and held an enormous acreage of gas leases in what was known as the Hogshooter field, which was in Washington County, Oklahoma. M. E. Durham's inventory and appraisal, which the said Charles L. Daugherty says he helped to make, contains only the following leases in Washington County: 210 acres of operated leases, appraised at \$968.42, and 470 acres of unoperated leases, appraised at \$760.09.

"In the inventory and appraisal of Mr. Musson, who acted for the Oklahoma Natural Gas Company, the only leases in Washington County given were 210 acres of operated leases, which he appraised at

\$968.42, and 360 acres of unoperated leases, which he appraised at \$260.09."

The contention the Commission now makes in this respect is a repudiation of its own findings.

**The averment that appellant has many millions of dollars invested in wildcat leases.**

In defendants' answer it is stated that included in appellant's valuations upon the original cost basis are many "millions of dollars for the cost of highly speculative and so-called wildcat leases" (Pr. Tr. 63). This averment is not true. Speculative and wildcat leases are leases in territory which has not been developed and proven valuable for gas. Leases which have been drilled and are producing gas in merchantable quantities are not speculative or wildcat leases. Durham's inventory and appraisal allows altogether only \$451,415.42 for unoperated leases (Pr. Tr. 322); and in his letter of transmissal to the Commission Durham said (Pr. Tr. 345):

"On all leases, rights-of-way and fee properties, only actual cost thereof was considered; each and every lease, each tract of fee property, and each rod of right-of-way having been taken from the original instrument, granting same to the Oklahoma Natural

Gas Company, and no value was added to these leases, rights-of-way, or fee properties, unless vouchers were in the files showing such expenditures, or it could be proven to us beyond all doubt that such expenditures were made."

Musson's inventory and appraisal on original cost basis included only \$437,828.64 for unoperated leases (Pr. Tr. 322). The entire item for operated leases contained in Durham's inventory and appraisal was only \$327,135.65 (Pr. Tr. 345). Yet the Commission says, in repudiation of its order and finding, and in an effort to sustain the confiscatory rates, that included in the valuation of appellant's property upon the original cost basis are "millions of dollars for the cost of highly speculative and so-called wildcat leases."

#### **The Oil and Gasoline Business.**

In their answer defendants say that appellant is engaged in the oil business, and that it develops and tests wildcat leases in the guise of drilling for gas, charging the expense thereof to the gas business if the well is dry or produces gas, and charging it to the oil business only if it produces oil. It says that appellant has developed its 107,000 acre lease in the Osage Nation in that way, requiring the public to

compensate it for the losses incurred in such speculative ventures, and reaping the benefit in its private capacity if the wells produce oil (Pr. Tr. 63-4).

In view of the facts, and of the Commission's knowledge of the facts for years, and of its own orders and requirements in relation to the matter, it is difficult to treat this assertion in a temperate manner. Up to the year 1919 appellant's entire business, gas, oil and gasoline, were treated as one business, and the public had the benefit of all of appellant's earnings both in the oil and the gasoline business (Pr. Tr. 327). They were separated in the year 1919. In every rate hearing appellant has had before the Commission, including that resulting in order 1886, both appellant's natural gas business and its oil and gasoline business have been gone into thoroughly before the Commission, and evidence has been submitted showing the investment in the public service property and in the oil and gasoline properties, and all data, facts and figures relative to all of said properties and business has been fully and completely disclosed to the Commission. In addition to that, appellant's books and records have always been open to the Commission's inspection and examination. Appellant has never charged the ex-

pense of any well drilled for oil, whether the same was a producing well or a dry hole, to the public service business. Ever since 1919 its oil and gasoline business have been kept in separate departments, as separate, both in investment and in operation, as if they were owned and operated by different corporations altogether (Pr. Tr. 327).

Appellant has drilled for oil only in territory thought to be productive of oil, and when it so drilled it charged the expense thereof to the oil department, whether the well was a producer or a dry hole. It has drilled for gas only in territory believed to be gas territory, and when it has so drilled it has charged the expense thereof to gas operations, whether the well was a producer or a dry hole. But if, in drilling for oil appellant should find gas available to its pipe lines, then the well would be turned to the gas department, and that department would be charged with the cost of it. On the other hand, if in drilling for gas appellant found oil, then the well would be turned to the oil department and the expense of the well would be charged to that department. In the hearing of this cause before the Commission the amount of the investment in oil and gasoline properties, the expense of those departments and

the net earnings therein were all shown, and appellant offered in said hearing to treat the income from said oil and gasoline properties as though it were income from the public service part of its business if its investment in said properties and its expenses therein were also so treated (Pr. Tr. 327-8).

The value of appellant's property invested in its oil business is \$525,024.25; and the value of its property invested in the gasoline business is \$323,410.13 (Pr. Tr. 333). During the year 1920 appellant's net income from its operations in the oil business was \$6,644.10, excluding its sale of an oil lease, a capital asset, for which it received \$225,000. For the first 11 months of the year 1921 appellant's net earnings from its oil business was \$6,065.71. During the year 1920 appellant's net earnings from its gasoline business were \$48,985.65. During the first 11 months of 1921 appellant suffered a deficit in the operation of its gasoline plants of \$6,234.19 (Pr. Tr. 333).

Defendants' averment that appellant has wild-catted for oil on its 107,000 acre lease in the Osage Nation is unpardonable, because the defendants know, and have always known, that that is not true. The facts are that that lease was executed by the Sec-

retary of the Interior and the Osage Nation on March 17, 1916, to the Osage and Oklahoma Company, which was merged into the Oklahoma Natural in July, 1917. That lease conveyed to appellant no oil rights at all, but only the gas rights. Other people have leases upon the very same acreage executed by the Secretary of the Interior and the Osage Nation covering the oil rights; and a specific provision of appellant's lease and of the leases executed to the oil lessees is that, if appellant in drilling for gas should find oil, then it is required to turn the well over to the oil lessees, who are required to reimburse appellant for the cost of the well; and, on the other hand, if the oil lessees in drilling for oil should find gas, then they are required to turn the well over to appellant, and appellant is required to reimburse them for the cost of the well. If appellant should drill a 5,000 barrel oil well in the Osage, it could not keep a gallon of the oil. Copies of this lease were filed with the Corporation Commission of Oklahoma when it was first executed; in fact, appellant had considerable difficulty in procuring this lease and the Commission was active in assisting it to procure the Secretary of the Interior to execute it. The terms of that lease have been gone into before the Corporation Commission in hearing after hearing, not only with re-

spect to rates but with respect to the adequacy of appellant's supply of gas; and the Commission knew at the time it filed its answer herein the terms of that lease, and knew that appellant had nothing to gain by drilling for oil in the Osage Nation, and that it never drilled a well for oil in the Osage Nation in its whole history (Pr. Tr. 328).

In the order which the Commission made on March 31, 1917, in the case entitled *Re Osage and Oklahoma Company*, P. U. R. 1917D 426, the Commission referred to that lease, saying:

"The evidence shows that heretofore Tulsa has enjoyed comparatively very low rates for natural gas; that the Osage & Oklahoma Company, which of late years has been supplying the city of Tulsa, has been securing its gas from acreage in the Osage Nation within a few miles of the city of Tulsa, and that it has been required to pay a well rental of only \$100 per well per year. Thus the Osage & Oklahoma Company has had access to a practically free source of supply of natural gas, and the city has had the benefit thereof. Conditions have changed. On the 17th day of March, 1916, the Osage & Oklahoma Company, in order to retain control of its acreage in the Osage Nation, was required thereafter to pay a royalty of 3 cents per thousand cubic feet for all gas taken from the field; to expend the sum of \$35,000 per year in the operation and development of its lease, and to pay for a minimum of 10,000,000 cubic

feet per day whether this amount be produced or not. The matter of payment of the minimum in the sum stated is qualified, and has not yet been finally adjudicated by the Interior Department, but for the present this minimum, which amounts to the sum of \$109,500 per year, must be paid."

#### **Appellant's Production Expenses.**

Defendants in their affidavits complain of the amount of appellant's production expenses, saying that they equal the cost of the gas purchased, and that appellant had done an excessive amount of drilling.

During the summer of 1920, following a shortage during the two previous winters, the Commission called appellant's vice president before it on numerous occasions, and directed him to see to it that appellant put on an intensive drilling campaign for the purpose of procuring an adequate supply of gas for the coming winter, stating that appellant should "drill, drill, drill and keep drilling until it knew it had an adequate quantity of gas" (Pr. Tr. 338-9); and on July 19, 1920, the Chairman of the Commission wrote appellant stating that the Commission understood that appellant contemplated an intensive drilling campaign, and that if it omitted

it and permitted a shortage of gas to occur during the following winter, it intended to put appellant into the hands of a receiver, and take it from under its present management and keep it so (Pr. Tr. 339). Having required appellant to "drill, drill, drill," and having stated that if appellant would get the gas the Commission would see to it that it received an adequate return (Pr. Tr. 339), it now denies the adequate return and complains of the expenditure made in complying with its express command.

A large part of appellant's so-called production expense, however, as was explained to the Commission in the hearing, did not and does not relate merely to the drilling and equipping of gas wells. On the contrary, according to appellant's system of bookkeeping heretofore in effect, only its main pipe lines have been treated as transmission lines, and the other lines running from gas fields and gas wells to appellant's main pipe lines have been treated as production lines, and the expense of maintaining said lines and of the operation of same and the taxes thereon were charged to the production account. For example, appellant has a main pipe line running from Tulsa to Oklahoma City. In 1917 it

built a line from the Morrison field intersecting this main line at Wellston. The line from Morrison was 52 miles long, and 42 miles of it was 12-inch pipe and 10 miles of it was 10-inch pipe, and the line cost \$826,000. That line has never been treated as a transmission line, but has been treated as a production line running from the gas field to appellant's transmission line; and all the taxes on that line, the cost of operating and maintaining it, the cost of the gathering lines running from that line to the wells, and the taking them up and removing them from one well to another, all went into the production expense and not into the transmission expense, where strictly speaking it probably belonged (Pr. Tr. 337). The same thing is true of the south 53 miles of the line running from Oklahoma City to the Walters field, 33 miles of which is 16-inch pipe and 20 miles of which is 12-inch. These facts were fully explained to the Commission in the hearing (Pr. Tr. 338).

In addition to the foregoing appellant's production expense includes the expense of obtaining gas leases, land rentals, and royalties, the expense of drilling wells, the expense of operating wells, the expense of repairing the wells, and the repairs on the production lines.

Since the leakage from the well to the consumers' burner tips is 35%, which is the average the United States over, then in order that appellant might sell 20 billion cubic feet of gas in the year 1920, it was necessary that it produce and purchase together at least 27 billion feet. Appellant produces about 7 billion cubic feet, at an average expense, counting the operation and maintenance of the production lines as hereinbefore explained, but which really should be charged to transmission expense, of about 18c per M. Oil and gas producers estimate that considering the cost of drilling and casing and the short life of the wells, it costs from 15 to 20 cents per M to produce natural gas, and appellant is enabled to buy the purchasable quantity for 10c per M only because of the great amount of drilling done in Oklahoma for oil purposes in which the oil operators find gas instead of oil, and who sell it to appellant at 10c per M rather than suffer the entire loss of the cost of the well (Pr. Tr. 338).

As heretofore pointed out, however, not all of this 7 billion is leakage, or in reality production expense. A billion cubic feet a year is used in operating appellant's compressor stations, which is in reality a transmission expense; but this is not charged

as an operating expense at all, and goes in as leakage (Pr. Tr. 338).

**Defendants' contention that appellant assumed the hazard of the business.**

In their answer the defendants "admit that the business of producing and transporting gas for public use is a most hazardous enterprise" (Pr. Tr. 62); but they allege that in increasing its investment from year to year appellant has acted in the knowledge "that the business of producing and transporting natural gas is a hazardous business, and in voluntarily so doing the defendants assert that the complainant has itself assumed the hazard" (Pr. Tr. 63). Yet, if appellant does not do so and has a shortage of gas, the Commission requires it to discount its bills. They also say, "In other words the defendants state that the complainant in voluntarily entering upon the service of the public itself assumed and is required to sustain and suffer the losses incident to the hazardous character of that business as by it alleged to exist" (Pr. Tr. 63).

We have already referred to the decisions of this court to the effect that the rate of return in a hazardous and risky business should be greater than that in a safe and stable business.

If appellant was permitted, free from restraint by the State, to conduct its business and sell its gas upon a purely competitive basis, then unquestionably appellant would be required to suffer all the losses caused by the risky and hazardous nature of the business, as in the case of oil producers; but in such case appellant would also have the opportunity which oil producers have of making extraordinarily large amounts of money. If gas were sold for domestic purposes upon a competitive basis with other fuels, considering its convenience and cleanliness, inasmuch as artificial gas sells for \$1.25 per M and has only half the heating units of natural gas, appellant could receive from \$2.00 to \$2.50 per M for its product. Of course it demands no such rate.

Even if it were true that appellant is required to stand uncompensated the risks and hazards of the business, nevertheless it is not true that confiscation and legalized robbery by the State is one of the risks and hazards which appellant is required to suffer. Answering the same contention in *Reagan v. Farmers Loan & Trust Co.*, 154 U. S. 362, 409, this court said:

"They who invest their money in railroads take the same chances that men engaged in other business do of making profit from the carrying

on of their business; and, as appears from other cases submitted to us with this, some of the railroads in the State of Texas have been operated at a constant loss. But such possibilities of loss are simply the natural results of all business freely carried on, against which the law is powerless to afford protection. *Very different are the considerations which arise when the strong arm of the law is invoked to compel parties engaged in legitimate business, and business which cannot be abandoned at will, to so reduce their charges for service as to make the carrying on of that business result in a continued loss. In the one case the law is powerless to prevent injury; in the other it is used to work injury.*"

#### **The Reason Industrial Sales Have Decreased.**

In their answer defendants allege that during the years 1919 and 1920 appellant sold large quantities of gas to industrial users, but during the latter part of the year 1920 and the entire year 1921 the price of fuel oil and coal had so diminished that appellant was unable to sell natural gas for industrial purposes in competition with those fuels (Pr. Tr. 60); but that in recent months fuel oil has advanced in price, so as to warrant the belief that appellant's sales of industrial gas will be resumed (Pr. Tr. 61).

Are rates to be fixed so that they will give the minimum return allowable in the best years, and produce deficits in poor years, especially in view of the holding that past losses cannot be recouped?

In 1919 and the early part of 1920, the demand for industrial gas, owing to the abnormally high price of fuel oil and coal, was large enough to have enabled appellant to sell as much industrial gas as it sold domestic gas, but at that time it did not have an adequate supply (Pr. Tr. 372). The distances which appellant is now required to transport its gas, the enormous increases it has been required to make in its investment in order to get and furnish gas, the increased cost of gas in the field, the increase in its operating expenses and taxes caused by the increase in its investment, the far extension of its lines, and the increased number of employees necessary, make the cost of furnishing gas such that appellant can sell but little industrial gas in competition with coal and fuel oil (Pr. Tr. 117).

It is true that during the year 1921 the price of fuel oil and coal were such that appellant, considering the increased cost of producing and furnishing gas, could not sell gas for industrial purposes in competition with those fuels. However, during 1918 and 1919 and the first part of 1920, the price of oil and coal themselves were abnormal, crude oil bringing as much as \$3.85 per barrel in Oklahoma, and fuel oil selling in Oklahoma at \$2.25 per barrel, and coal running from \$7.00 to \$16.00 per ton. During

those times appellant's inability to procure and keep an adequate supply of gas rendered it unable to sell such quantities as the price of oil and coal gave it a demand for. From October, 1920, to February, 1922, however, fuel oil could be purchased in Oklahoma for 75 cents per barrel, and the price of coal had also gone down, so that it was cheaper for industries to use oil and coal for fuel than it was to use gas at any price at which appellant could sell same, considering the cost of gas to appellant and the cost of transporting and delivering the same. Also the cost of coal and fuel oil are more nearly normal now than they were in 1918 and 1919; but they are still above normal, and there is no reason to believe that the price of oil will advance, but on the contrary there is reason to believe that the price will further decline, as it is still much higher than during the pre-war period (Pr. Tr. 330-1). During February, 1922, there was still a further reduction in the price of oil, and fuel oil was decreased from 75 to 60 and even 50 cents a barrel (Pr. Tr. 372-3). And as this brief is being written in August, 1922, another reduction of 25c per barrel in crude oil in Oklahoma has been made.

If the prices of oil and coal from 1918 to 1920,

which were so high as to make a demand for industrial gas, were normal, so that we might look for a return to those prices, then the situation with respect to industrial gas might be considered temporary; but inasmuch as those prices, which made the demand for industrial gas, were abnormal, the present situation must be considered normal and permanent. And in addition, if appellant should sell the large amount of industrial gas, it supply would soon fail.

**Defendants' contention that appellant's property has been built up out of earnings, and that past earnings have provided an adequate return and a sufficient sum for amortization.**

In defendants' answer it is alleged that appellant's earnings have been sufficient to provide not only an adequate return upon the amount of its investment, but also a sufficient reserve for depreciation and amortization, and that the value of appellant's property should be reduced accordingly (Pr. Tr. 57, 65).

The facts with respect to appellant's earnings are as follows:

The Oklahoma Natural Gas Company was organized on October 9, 1906 (Pr. Tr. 322); on July

6, 1917, there was a merger with the Oklahoma Natural Gas Company of the following named companies: Oklahoma Natural Gas Company, organized October 9, 1906; capital stock \$4,000,000; Caney River Gas Company, organized May 24, 1906, capital stock \$1,000,000; Osage and Oklahoma Company, organized March 16, 1905, capital stock \$1,500,000; Oklahoma Fuel Supply Company, organized February 15, 1910, capital stock \$250,000; United Fuel Supply Company, organized June 19, 1911, capital stock \$500,000; Peoples Fuel Supply Company, organized August 21, 1912, capital stock \$100,000 (Pr. Tr. 323).

From October 9, 1906, the date of its organization, to December, 1910, a period of four years, the Oklahoma Natural Gas Company paid no dividend of any kind or character, all the earnings of the company being put back into the business. In December, 1910, it paid a dividend of 1%. During the year 1911 it paid a dividend of 3%. In 1912 it paid a dividend of 4%. In each of the years 1913, 1914, 1915 and 1916, it paid a dividend of 5% (Pr. Tr. 324-5). During the period of eleven years, therefore, from 1906 to 1917, the Oklahoma Natural Gas Company paid a total dividend of 28%, or an aver-

age of 2/6-11% per annum. All the rest of its earnings went into the property; and the situation was the same as if appellant had paid reasonable dividends, and the stockholders had thereupon subscribed for additional stock and purchased the same with the dividends. They would certainly be entitled to earnings upon their invested dividends. Dividends of 2/6-11% per annum for 11 years certainly would not be excessive, and would not amortize the property.

The Caney River Gas Company, organized on May 24, 1906, paid no dividend of any kind or character from the date of its organization until the year 1912, a period of six years, all the earnings of the company being put back into the property. In 1912 it paid a dividend of 6%; in 1913, 8%; in 1914, 8%; in 1915, 9%; and in 1916 10% (Pr. Tr. 325); making total dividends of 41% paid over a space of 11 years, or an average dividend of 3/8-11% per annum.

The Osage and Oklahoma Company, organized on March 16, 1905, paid no dividends of any kind or character from the date of its organization until 1911, a period of six years, all the earnings of the company being put back into the property. In

1911 it paid a dividend of one half of 1% ; in 1912, 3% ; in 1913, 4% ; in 1914, 5% ; in 1915,  $7\frac{1}{2}\%$  ; and in 1916, 9% (Pr. Tr. 325) ; making total dividends amounting to 29% paid during a period of 12 years, or an average of  $2\frac{5}{12}\%$  per annum.

The Oklahoma Fuel Supply Company, organized on February 5, 1910, paid during the year 1910 a dividend of  $11\frac{1}{2}\%$  ; in 1911, 9% ; in 1912, 8% ; in 1913,  $7\frac{1}{2}\%$  ; in 1914, 8% ; in 1915, 8% ; and in 1916, 6% (Pr. Tr. 325) ; making a total dividend of 48% paid during a period of seven years, or an average of  $6\frac{6}{7}\%$  per annum.

The United Fuel Supply Company, organized in June, 1911, paid no dividends during that year. In 1912 it paid a dividend of  $11\frac{1}{2}\%$  ; in 1913, 8% ; in 1914, 8% ; in 1915, 4% ; and in 1916, 6% (Pr. Tr. 325) ; making a total dividend of  $27\frac{1}{2}\%$  paid during a period of  $6\frac{1}{2}$  years, or an average of  $4\frac{4}{13}\%$  per annum.

The Peoples Fuel Supply Company was organized on August 21, 1912, and paid no dividend from its organization until the year 1917, just before the merger, when it paid a dividend of 30%, which would equal 6% per annum during the time (Pr. Tr. 325).

Since the merger in 1917 and until and including the year 1920, appellant has paid a dividend upon its natural gas investment and business of only 8% per annum upon its issued capital stock. In 1919 and 1920 it paid dividends of 2% from its oil and gasoline business, and in January, 1921, it paid a dividend of one half of 1% from its oil and gasoline business. In 1921 it paid no dividends upon its gas business, and after January, 1921, paid none upon its oil or gasoline business (Pr. Tr. 325).

From the earliest organization of the companies to their merger in 1917, a period of more than ten years, the total dividends paid by all the constituent companies, from both their gas, gasoline and oil business, was only the sum of \$2,192,500 (Pr. Tr. 326). Since 1917 and up to 1921 appellant has paid dividends of 8% upon its issued capital stock, but has had to put back into the property each year more than the dividends amounted to.

We deem this a sufficient answer to the contention that appellant's property has already been amortized. The foregoing shows exactly what appellant's stockholders have gotten out of it. It is true that the property has been added to from earnings; but in order that that might be done appel-

lent's stockholders forewent their dividends. They were entitled to the dividends. If the dividends had been paid to them, as was done after 1917, and they had then subscribed for new stock and paid for it at par, in order that the company might acquire additional properties, no one would deny their right to a return upon such investment. But there is no difference between that and investing the earnings in additional property instead of paying it out in dividends. *Brymer v. Butler Water Co.* (Pa.), 36 Atl. 249, 251; *Kenebeck Water District v. City of Waterville* (Me.), 54 Atl. 7; *Grafton County Electric Light & Power Co. v. State* (N. H.), 94 Atl. 192; *Fall River Gas Works Co. v. Board of Commissioners* (Mass.), 102 N. E. 475; *Lincoln Traction Co. v. City of Lincoln* (Neb.), 171 N. W. 192.

But even if appellant's earnings had in fact been excessive in the past, does the law require that every prospective purchaser of stock in appellant shall go back over the history of the company's past operations, and ascertain whether its earnings have been large in the past in order to determine whether, if he purchases stock in appellant he will be allowed an earning thereon commensurate with the risk he takes? When appellant was organized in 1906 it

had five stockholders. In November, 1921, it had 2,958 stockholders, and there is not now a single stockholder in appellant who was a stockholder in 1906 (Pr. Tr. 346). Just as past losses are not to be compensated by rates in excess of those that are reasonable and just, so even past success would not justify the reduction of rates below those that are reasonable and just. *Havre de Grace & Perryville Bridge Co. v. Towers* (Md.), 103 Atl. 319; *Re Stanton Independent Telephone Co.*, P. U. R. 1921D 240, by the Nebraska State Railway Commission; *Davis v. Pennsylvania Gas Co.*, P. U. R. 1921B 342, by the New York Public Service Commission; *Re Boone County Telephone Co.*, P. U. R. 1921A 434, by the Arkansas Corporation Commission; *Board of Trade v. Mountain Home Telephone Co.*, P. U. R. 1916C 688, by the New York Public Service Commission; *Re Mutual Telephone Co.*, P. U. R. 1920B 565, by the Hawaii Public Utilities Commission; *Re Milwaukee Electric Railroad & Light Co.*, P. U. R. 1920A 361, by the Wisconsin Railway Commission; *Re Winnipeg Electric Railway Co.*, P. U. R. 1920F 879, by the Public Utilities Commission of Manitoba, Canada; *Re Desert Power & Water Co.*, P. U. R. 1920C 942, by the Arizona Commission; *Re United*

*Fuel Gas Co.*, P. U. R. 1918C 193, by the W. Va. Public Service Commission; *Rich v. Biddeford & Saco Water*, P. U. R. 1917C 982, by the Maine Public Utilities Commission; *Re Indianapolis Water Co.*, P. U. R. 1917E 556, by the Indiana Public Service Commission.

And this court, answering a similar contention in *Newton v. Consolidated Gas Co.*, decided on March 6, 1922, and not yet officially reported, said:

“Since 1907 the Gas Company has been subject to supervision by a Commission empowered to prohibit unreasonable rates, and the presumption is that any profits from its business were lawfully acquired. *Municipal Gas Co. v. Public Service Commission*, 225 N. Y. 89, 99. Mere past success could not support a demand that it continue to operate indefinitely at a loss. The public has no such right in respect of private property, although dedicated to public use.”

**Defendants' assertion that in the merger properties were taken in at an excessive valuation.**

In repudiation of its own order and findings as to the values of appellant's properties, in its answer and affidavits the Commission alleges that appellant, in taking over the properties of the constituent companies in the merger, took over the same at an excessive valuation, and it cites in support of this

statement a prior order made by the Commission and testimony given in previous hearings, of all of which the Commission had knowledge when it made the order complained of. Inasmuch as the rates complained of are purported to be based upon evidence before the Commission and upon valuations made by the Commission's own engineers, it would seem that the values in 1917 would not be material. The rates are based, not upon capitalization, but upon valuation. However, the properties of the constituent companies were appraised, just before the merger, by Mr. John Pew, of Pittsburgh, Pennsylvania, the president of the Hope Natural Gas Company, the largest natural gas company in the United States, and by Mr. Harry Reeser of Pittsburgh, Pennsylvania, assistant to the president of the Ohio Fuel Supply Co. and connected with many other gas companies. Neither of these gentlemen owned a dollar's worth of stock either in appellant or in any of the companies which were merged with appellant. Both of them were practical, competent natural gas men, experienced in the operation of natural gas properties and in the determination of the values of such properties. They were among the best known natural gas men in the United States. They deter-

mined the price at which appellant should take over the properties of the constituent companies (Pr. Tr. 324). The entire history of the matter is found in Mr. Sharp's rebuttal affidavit beginning on page 322 of the printed transcript and running to page 324, in which the properties owned by the various constituent companies and the values thereof are stated.

It is stated that just a short time before the merger the Commission had found the value of the property of the Osage and Oklahoma Company to be much less than that at which appellant took it over. Presumably the Commission knew that when it made Order 1886. The facts with respect to that matter may be found in Mr. Sharp's affidavit beginning on page 335 of the printed transcript and running to page 337. The Commission's very order showed that it was not then purporting to value the property, and that the determining feature of the rate was the additional cost of the gas to that company. It stated that the case had not been tried along the lines ordinarily followed in a rate case, and that many features which the Commission usually takes into consideration had not been mentioned in the testimony, and that in determining the tentative

values the Commission did not take into account franchise rights, going concern value, working capital, *acreage, leases, wells and equipment.*

Defendants' contention that appellant took no proper steps to prevent the enforcement of the Commission's order terminating the 48 cent rate, is answered on page 313 *et seq.* of the printed transcript.

Its statement that appellant expressed no dissatisfaction with the rates in 1918 is answered on page 329 *et seq.*

Its statement that in 1917 appellant sold gas to other pipe line companies is answered on page 330.

Its statement that it has never required appellant to extend its lines is answered on page 331 *et seq.*

#### **Valuation for Taxation.**

Defendants introduced a certified copy of a return filed by appellant with the State Board of Equalization of Oklahoma for the purpose of taxation, and contended that that was evidence that appellant's properties did not exceed the value of \$8,000,000. To that appellant makes the following answers:

First. By Sec. 8, Art. 10, Oklahoma Constitution, it is provided that all property which may be taxed ad valorem shall be assessed for taxation at its fair cash value; and Sec. 5, Art. 10, provides that taxes shall be uniform upon the same class of subjects. The Supreme Court of Oklahoma has held that this requires uniformity of the burden (*Ander-son v. Ritterbusch*, 22 Okla. 761); and this court has held that "uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation." *Cum-mings v. National Bank*, 101 U. S. 153, 158; *Green v. Louisville & Interurban Railroad Co.*, 244 U. S. 499. Other property taxed ad valorem in Oklahoma is assessed only at about 50% of its value. In Okla-homa County an actual comparison of the assess-ment of rea. estate with the selling price thereof about tax-assessing time shows that said real estate was assessed at 54% of its market value (Pr. Tr. 269-308).

In *Green v. Louisville & Interurban Railroad Co.*, 244 U. S. 499, this court held that the adoption of full value as the basis of taxation is only for the purpose of securing uniformity in the assessment,

and that the duty to assess at full value must yield where necessary to avoid defeating its own purpose; and that under a law or constitution requiring the assessment of all property taxed ad valorem to be at its fair cash value, to assess a portion at its actual cash value and other property at less, is to deny to the owners of the property taxed at full value the equal protection of the law, in violation of the Fourteenth Amendment. Under the circumstances therefore appellant was not required to render its property for taxation at full value; and if the State had undertaken to assess it at full value, its action in so doing would have been in violation of the Fourteenth Amendment.

Second. By subdivision A, Chap. 107, Sess. L. Oklahoma 1915, p. 180, all oil and gas companies are required to pay a tax upon the gross production of oil or gas from their leases, which tax is "in lieu of any other taxes that might be levied and collected upon an ad valorem basis upon the equipment and machinery in and around any well producing natural gas or petroleum or other mineral oil"; and this act was amended by Chap. 39, Sess. L. Oklahoma 1916; and it has been construed by the Supreme Court of Oklahoma in *Re Skelton Lead & Zinc Com-*

*pany's Gross Production Tax for 1919*, 197 Pac. 495, in which the court held that this gross production tax is "upon the entire property, mills, plants, machinery, equipment, etc., the value of which as a going concern, and the reasonableness of the return upon which is to be ascertained by the gross value of the products; and that the gross production tax is an ad valorem tax and is in lieu of all other taxes upon that property." And in *Re Indian Territory Illuminating Oil Co.*, 43 Okla. 307, the Supreme Court of Oklahoma held that oil and gas leases themselves were not taxable.

All of appellant's oil and gas leases, and all of the equipment in and about the wells thereon, were therefore omitted from the returns to the State Board of Equalization, because the tax on that portion of the property which was taxable was paid by the gross production tax. Also appellant's lease of 107,000 acres in the Osage Nation, executed by the Secretary of the Interior and by the Osage Nation, is not taxable under the express decision of this court. *Indian Territory Illuminating Oil Co. v. State of Oklahoma*, 240 U. S. 522.

Third. In the Missouri rate cases, 230 U. S. 474, the State Assessing Board of Missouri had as-

sessed the railway companies; but this court, in an opinion by Justice Hughes, held that that was not a competent basis for making rates, saying:

“None of the members of the State Assessing Board was examined. There is no satisfactory proof of the grounds of their judgment. Nor was it shown that these valuations, made by them for the purpose of taxation, were upon a basis which could properly be taken in determining the fair value, where the sufficiency of prescribed rates is involved and the issue is one of confiscation.”

Further on the court said:

“Manifestly, a finding of confiscation could not be based on such a valuation in the absence of clear and convincing proof that the value actually existed and that the different items of property were estimated respectively by correct methods and in accordance with proper criteria of value. This proof was lacking. In the case of the other roads, although the special considerations which have been mentioned with respect to the Burlington property may not be applicable, still we are left in uncertainty as to the correctness of specific valuations which have been made. It cannot be regarded as sufficient to introduce assessments, or valuations made for the purposes of taxation; and this is particularly true when the principles governing the assessments are not properly shown, and for all that appears, they may have rested upon methods of appraisement which would be inadmissible in ascertaining the reasonable value of the property as a basis for charges to the public.”

Fourth. The Oklahoma State Board of Equalization had itself adopted a schedule for pipe which it applies in assessing all pipe line companies, both oil and gas; and it directed all such companies, including appellant, to make their returns to said State Equalization Board in conformity with said schedule. Said schedule adopted by said Board and in effect at the time of making said reports, was as follows:

2-inch Line	-----\$	601.00 per mile
3-inch Line	-----	1,144.00 per mile
4-inch Line	-----	1,629.00 per mile
6-inch Line	-----	2,665.00 per mile
8-inch Line	-----	4,403.00 per mile
10-inch Line	-----	4,842.00 per mile
12-inch Line	-----	7,309.00 per mile
14-inch Line	-----	9,779.00 per mile
16-inch Line	-----	13,300.00 per mile

This schedule is much less than the real cost of a pipe line (Pr. Tr.); but the State of Oklahoma could not require appellant to give in its property at more than the schedule, when that was being applied to the properties of all other pipe line companies, both oil and gas.

#### CONCLUSION.

The defendants in fact made no defense to appellant's case. In the face of the Commission's own

findings, made after a formal investigation lasting 11 months, the defendants' defense now consists, not in the presentation of facts, but in quips and quibbles and references to orders made by and evidence given before the Commission years ago, all of which it knew when it made Order 1886.

It is respectfully submitted that the United States District Court erred in refusing to grant the temporary injunction, and that its order should be reversed and the cause remanded with directions to issue the same.

DAVID A. RICHARDSON,  
*Attorney for Appellant.*

Of Counsel:

C. B. AMES.

T. G. CHAMBERS.

RUSSELL G. LOWE.

B. A. AMES.



## APPENDIX

### A.

#### Applicable Provisions of the Oklahoma Constitution.

ARTICLE 9, SEC. 18: The Commission shall have the power and authority and be charged with the duty of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies; and to that end the Commission shall, from time to time, prescribe and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities, and conveniences, as may be reasonable and just, which said rates, charges, classifications, rules, regulations, and requirements, the Commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the commission, within the scope of its authority, shall be unlawful and void. The Commission shall also have the right, at all times, to inspect the books and papers of all transportation and transmission companies doing business in this State, and to require from such companies, from

time to time, special reports and statements, under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the State, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules, and regulations as may be necessary to prevent unjust or unreasonable discrimination and extortion by any transportation or transmission company in favor of, or against any person, locality, community, connecting line, or kind of traffic in the matter of car service, train or boat schedule, efficiency of transportation, transmission, or otherwise, in connection with the public duties of such company. Before the Commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation, or requirement, shall first be given by the Commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before said Commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the cou-

templated general order, rule, regulation, or requirement shall first be published in substance, not less than once a week, for four consecutive weeks, in one or more of the newspapers of general circulation published in the county in which the capitol of this State may be located, together with notice of the time and place, when and where the Commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement, and every such general order, rule, regulation or requirement, made by the Commission shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also, so long as it remains in force, be published in each subsequent annual report of the Commission. The authority of the Commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges, and classifications of traffic, for transportation and transmission companies, shall, subject to regulation by law, be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the Legislature to legislate thereon by general laws; Provided, however, that nothing in this section shall impair the rights which have heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations, or rates of charges to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such

city, town, or county, so far as such services may be wholly within the limits of the city, town, or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the Commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons or employees.

ARTICLE 9, SEC. 19: In all matters pertaining to the public visitation, regulation, or control of corporations, and within the jurisdiction of the Commission, it shall have the powers and authority of a court of record, to administer oaths, to compel the attendance of witnesses, and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the Commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company (after it shall have been first duly cited, proceeded against by due process of law before the Commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness, or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by the Constitution or by-law. The Commission may be vested with such additional powers and

charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation, or control of corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the State has the right to prescribe the rates and charges in connection therewith, or with the assessment of the property of corporations, or the appraisalment of their franchises, for taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the Commission, within a reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the Commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the Commission may deem proper, or such sum, in excess of five hundred dollars as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission shall be a separate offense; Provided, that should the operation of such order or requirement be suspended, pending any appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

ARTICLE 9, SEC. 20: From any action of the Commission prescribing rates, charges, or classifications of traffic, or affecting the train schedule of

any transportation company, or requiring additional facilities, conveniences, or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as hereinafter provided for, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to cost, as may be prescribed by law) may be taken by the corporation whose rates, charges, or classifications of traffic, schedule, facilities, conveniences, or service, are affected, or by any person deeming himself aggrieved by such action, or (if allowed by law) by the State. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court from the District Courts, except that such an appeal shall be of right, and the Supreme Court may provide by rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges, or classifications of traffic, schedules, facilities, conveniences, or service are affected, the State shall be made the appellee; but in the other cases mentioned, the corporation so affected shall be made the appellee. The Legislature may also, by general laws, provide for appeals from any other action of the Commission, by the State, or by any person interested, irrespective of the amount involved. All appeals from the Commission shall be to the Supreme Court only, and in all appeals to which the State is a party, it shall be represented by the At-

torney General or his legally appointed representative. No court of this State (except the Supreme Court, by way of appeals as herein authorized) shall have jurisdiction to review, reverse, correct, or annul any action of the Commission within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the Commission in the performance of its official duties; Provided, however, that the writs of mandamus and prohibition shall lie from the Supreme Court to the Commission in all cases where such writs, respectively, would lie to any inferior court or officer.

ARTICLE 9, ART. 21: Upon the granting of an appeal, a writ of supersedeas may be awarded by the Supreme Court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the Supreme Court, no action of the Commission prescribing or affecting the rates, charges, or classifications of traffic of any transportation or transmission company shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceeding resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by the Commission (or approved, on review, by the Supreme Court), payable to the State, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may

collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the Court on appeal. The Commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any supersedeas), of the order or requirement appealed from, to keep such accounts, and to make to the Commission, from time to time, such reports, verified by oath, as may, in the judgment of the Commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the Commission appealed from, together with the names and addresses of the persons to whom such overcharges will be refundable in case the charges made by the company, pending the appeal, be not sustained on such appeal; and the Commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase the said suspending bond, whenever, in the opinion of the Commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, all amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the party entitled thereto, in such manner and through such methods of distribution as may be prescribed by the Commission, or by law. All such appeals, affecting rates, charges, or classifications of traffic,

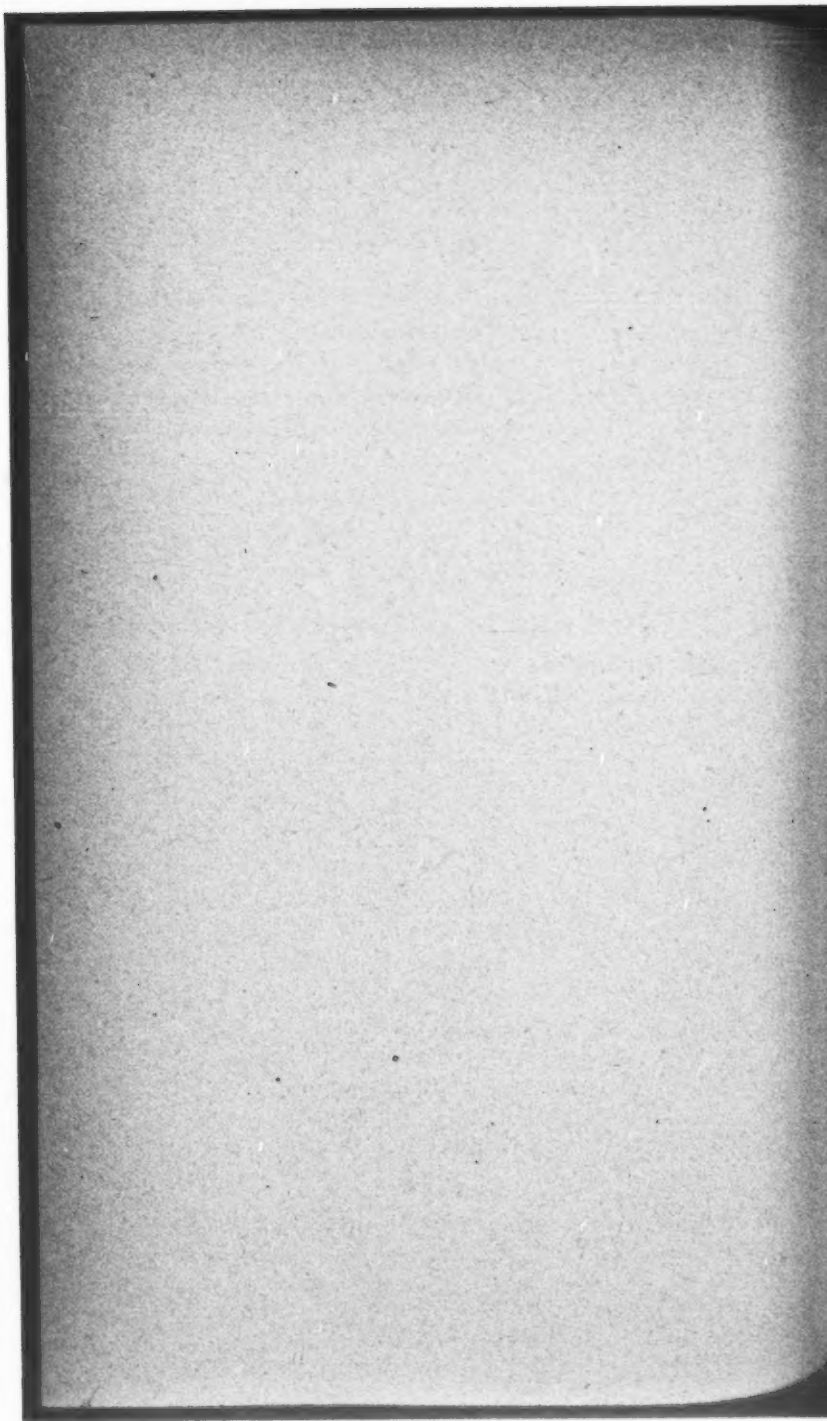
shall have precedence upon the docket of the Supreme Court, and shall be heard and disposed of promptly by the court, irrespective of its place of session, next after the habeas corpus, and State cases already on the docket of the court.

ARTICLE 9, SEC. 22: In no case of appeal from the Commission, shall any new or additional evidence be introduced in the Supreme Court; but the chairman of the Commission, under the seal of the Commission, shall certify to the Supreme Court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the Commission as may be selected, specified and required to be certified, by any party in interest, as well as such other evidence, so introduced, or considered as the Commission may deem proper to certify. The Commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the Supreme Court, upon disposing of the appeal. The Supreme Court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the Commission appealed from, as well as any other matter arising under such appeal: Provided, however, that the action of the Commission appealed from shall be regarded as *prima facie* just, reasonable, and correct;

but the court may, when it deems necessary, in the interest of justice, remand to the Commission any case pending on appeal, and require the same to be further investigated by the Commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the Commission by any party in interest), before the appeal is finally decided.

ARTICLE 9, SEC. 23: Whenever the court, upon appeal, shall reverse an order of the Commission affecting the rates, charges, or the classifications of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such orders as, in its opinion, the Commission should have made at the time of entering the order appealed from; otherwise the reversal order shall not be valid. Such substitute order shall have the same force and effect (and none other) as if it had been entered by the Commission at the time the original order appealed from was entered. The right of the Commission to prescribe and enforce rates, charges, classifications, rules and regulations affecting any or all actions of the Commission theretofore entered by it, and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the Commission, prescribing or altering such rates, charges, classifications, rules, or regulations, shall be retroactive.

ARTICLE 9, SEC. 24: The right of any person to institute and prosecute in the ordinary courts of justice any action, suit or motion, against any transportation or transmission company, for any claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the Commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the Commission; but, in no such proceeding by any person against such corporation, nor in any collateral proceeding shall the reasonableness, justness, or validity of any rate, charge, classification of traffic, rule, regulation, or requirement, theretofore prescribed by the Commission, within the scope of its authority, and then in force, be questioned: Provided, however, that no case based upon or involving any order of the Commission shall be heard or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme Court as authorized by this Constitution or by any law passed in pursuance thereof.



## APPENDIX

### B.

Act Approved March 25, 1913, Sess. L. 1913, p. 150.

AN ACT to extend the jurisdiction of the Corporation Commission over the rates, charges, services and practices of water, heat, light and power companies, and to give said Commission general supervision over such utilities, and declaring an emergency.

*Be it enacted by the people of the State of Oklahoma:*

Definition of terms—"Public Utilities."

Section 1. The term "public utility," as used in this act, shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, except cities, towns, or other bodies politic, that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public.

(a) For the conveyance of gas by pipe line.

(b) For the production, transmission, delivery or furnishing of heat or light with gas.

(c) For the production, transmission, delivery or furnishing electric current for light, heat or power.

(d) For the transportation, delivery or furnishing of water for domestic purposes or for power.

The term "Commission" shall be taken to mean Corporation Commission of Oklahoma.

**Commission's jurisdiction over public utilities.**

Section 2. The Commission shall have general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations, affecting their services, operation, and the management and conduct of their business; shall inquire into the management of the business thereof, and the method in which same is conducted. It shall have full visitorial and inquisitorial power to examine such public utilities, and keep informed as to their general conditions, their capitalization, rates, plants, equipments, apparatus, and other property owned, leased, controlled or operated, the value of same, the management, conduct, operation, practices and services; not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the provisions of this act, and with the Constitution and laws of this State, and with the orders of the Commission.

**Implied powers of Commission—Contempt.**

Section 3. In addition to the powers enumerated, specified, mentioned or indicated in this act, the Commission shall have all additional implied and incidental powers which may be proper and necessary to carry out, perform and execute all powers herein enumerated, specified, mentioned, or indicated, and to punish as for contempt such corpora-

tion, association, company or individual, their trustees, lessees, receivers, successors and assigns, for the disobedience of its orders in the manner provided for punishment of transportation and transmission companies, by the Constitution and laws of this state.

**Records of public utility business.**

Section 4. In case of the owner or operator of any public utility is engaged in carrying on any other business in connection with the operation of such public utility, the Commission may require the cost of the operation and gross revenues of such joint business to be kept in such form and manner as may be prescribed by the Commission so that the cost of the operation and gross revenues of the public utility may be ascertained.

**Orders of Commission—Scope—Right of appeal.**

Section 5. The Commission may, from time to time, adopt or promulgate, such orders, rules, regulations or requirements, relative to investigations, inspections, tests, audits, and valuations of the plants and properties and relative to inspection and tests of meters as in its judgment may be necessary and proper; Provided, that under the provisions of this act, any public utility, corporation, association, company, individual, their trustees, lessees or receivers, successors or assigns, may appeal from any order or finding or judgment of the Corporation Commission as provided by law in cases tried and

heard before said Commission of transportation and transmission companies.

**Emergency.**

Section 6. For the preservation of the public health, peace and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in force from and after its passage and approval.

## APPENDIX

### C.

Act Approved February 10, 1913, Sess. L. 1913, p. 10.

AN ACT conferring authority upon the Corporation Commission to adjust controversies between parties growing out of refunds for public service; to require all refunds to be turned over to the Commission; to determine the amount of refund and to whom due; and declaring an emergency.

*Be it enacted by the people of the State of Oklahoma:*

Commission vested with power of court of record.

Section 1. The Corporation Commission is hereby vested with the power of a court of record to determine: First, the amount of refund due in all cases where any public service corporation, person, or firm, as defined by the Constitution, charges an amount for any service rendered by such public service corporation, person, or firm, in excess of the lawful rate in force at the time such charge was made, or may thereafter be declared to be the legal rate which should have been applied to the service rendered; and second, to whom the overcharge should be paid.

Judgment—Collection.

Section 2. Upon ascertaining the amount of overcharge due from any public service corporation, person or firm, the Corporation Commission shall

have authority to render judgment against such public service corporation, person, or firm, for the amount of such overcharge that may have been collected from the public in violation of any legal rate, or order of the Commission, if necessary to insure the prompt payment of the same to the Commission. Such judgment shall be a lien upon the property of the public service corporation, person, or firm, and shall be collected in the same manner that fines and penalties imposed by the Corporation Commission are now authorized to be collected by law, and, when collected, shall be paid immediately by the Commission to the parties to whom it is due.

**Appealed orders—Additional judgment for expenses of Commission.**

Section 3. In all cases where an order fixing rates to be charged by any public service corporation, person or firm, has been appealed from and a supersedeas issued, the Corporation Commission, in making all orders requiring a refund of overcharges during the time the rates or charges were suspended, shall require such public service corporation, person, or firm, to pay, in addition to such refund, all expenses incurred by the Corporation Commission in checking such refund, determining to whom the same belongs, and in delivering the same to the party lawfully entitled thereto.

**Right of appeal.**

Section 4. Any party in interest shall have a right to appeal from any action of the Commission

to determine the amount of refund due, or to whom such refund shall be made, or from any order or judgment rendered by the Commission pertaining to the subject-matter set forth in any of the above sections of this act, in the same manner as appeals are now taken from the Corporation Commission to the Supreme Court.

**Unclaimed refunds—Escheat to state.**

Section 5. All refunds not paid out by the commission, or unclaimed, within two years from the time the money is received by the Commission shall be turned over to the State Treasurer.

**Emergency.**

Section 6. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof it is necessary that this act take effect and be in full force from and after its passage and approval.

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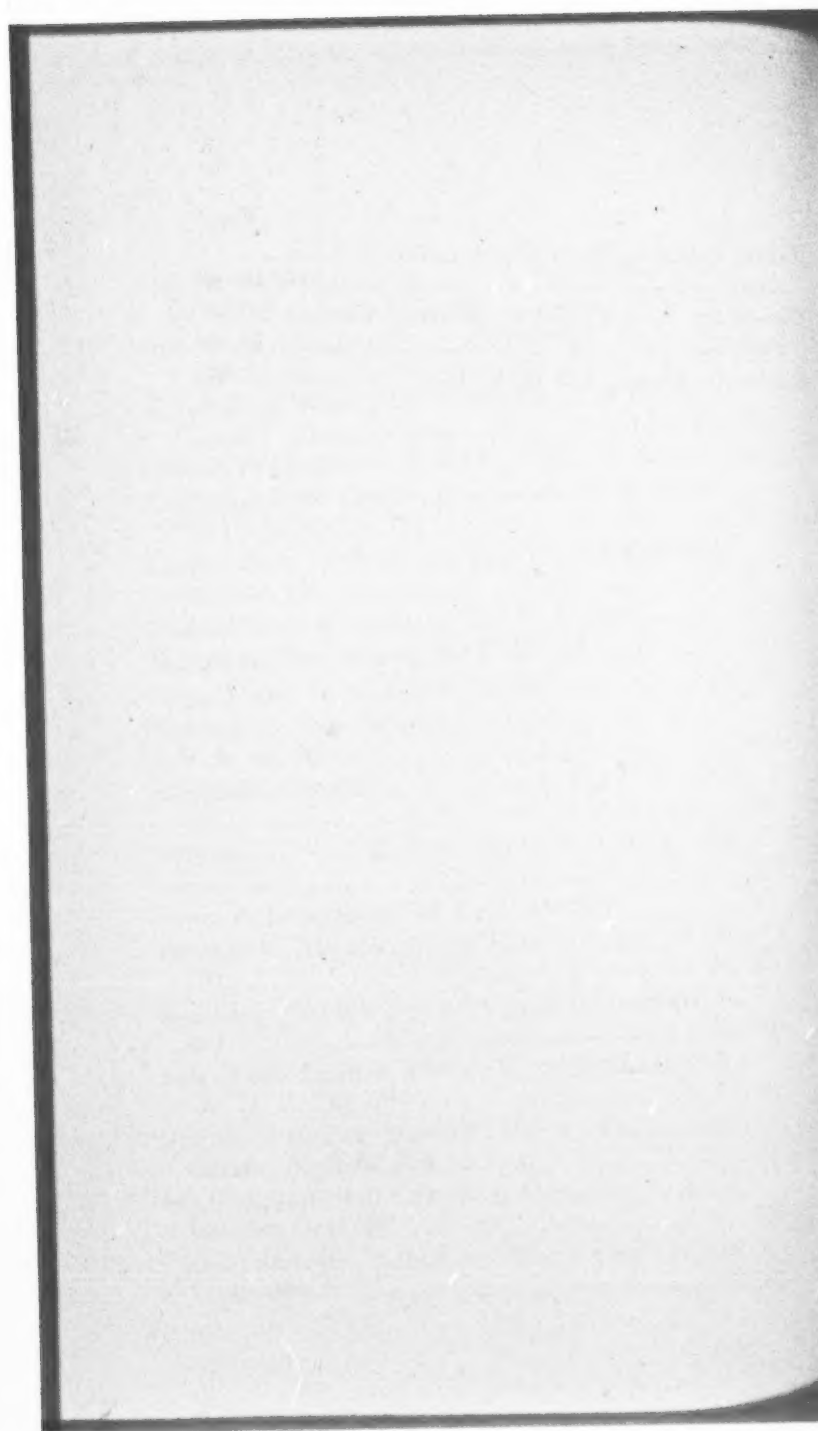
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# In the Supreme Court of the United States

October Term, 1922.

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OKLAHOMA NATURAL GAS COMPANY,

*Appellant,*

VS.

CAMPBELL RUSSELL ET AL.,

*Appellees.*

No. 406.

---

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF OKLAHOMA.

---

## BRIEF AND PRINTED ARGUMENT FOR APPELLEES.

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### THE QUESTION OF PREMATURETY.

The district court enlarged to three judges, by a majority, denied appellant's application for a temporary injunction, holding the application to have been premature, upon the authority of *Prentis v Atlantic Coast Line Railway*, 211 U. S. 210. While the

merits were argued, the disposition of the case upon the preliminary question of prematurity dispensed with consideration thereof.

The refusal of relief at this stage is attacked by appellant in lengthy and reiterated arguments based upon the following dissimilarity of procedural circumstance existing in this as contrasted with the Prentis case, namely: In the Prentis case the railway company had not availed itself of the remedy of appeal offered by the Virginia Constitution, whereas in this case the appellant has availed itself of that remedy, the appeal being now pending and the cause having been argued and submitted upon appeal but remaining undetermined. In the Prentis case the order has not actually become effective at the stage at which the injunction was sought, whereas in this case the appellant, after making its appeal to the state supreme court, applied for a *supersedeas* of the order pending the appeal, which *supersedeas* was denied because of insufficiency of showing, as a consequence of which the order has become and will, until the appeal shall be decided, remain effective. In urging these dissimilarities, appellant fails to observe that in event the supreme court of Oklahoma shall reverse the cause, it becomes its duty under

the Constitution to make a substitute order which relates back to the date of the original order, and under which any deficiency in the original order may, and must, be remedied.

Appellant seizes upon the circumstance of the effectiveness of the order pending the appeal as a foundation for its argument that the principles of the Prentis case are not here applicable; claiming that the alleged confiscation of its property pending the appeal warrants its demand, at this intermediate stage and before the final legislative step is taken, for relief at the hands of the Federal courts. This, as favorably as possible, is a concise statement of appellant's position. The soundness of this position depends upon the correct understanding of the Prentis case. In the view of the appellees, the argument of appellant is one purely *ab inconvenienti*, having no sound base in logic and being rested upon purely superficial dissimilarities to which are connected and isolated three particular expressions found in the Prentis case.

Before proceeding to attempt an analysis of the Prentis case, it should be stated, as is admitted by all parties, that the provisions of the Constitution of Virginia under consideration in the Prentis case

were copied *verbatim* into the Constitution of Oklahoma, and were by the Act of March 25, 1913, of the Legislature of Oklahoma (Session Laws of Oklahoma, 1913, p. 150, quoted page 253, Brief and Printed Argument of Appellant) made applicable to "public utilities," the statutory definition of which term embraces appellant in at least some of its works. Both the majority and minority opinions in the Prentis case disclosed a perfect familiarity with the constitutional provisions in question and the relationship of the facts and circumstances there existing to such provisions. All that is said in the Prentis case would be precisely applicable in this case if the appellant had resorted to the Federal court before availing itself of the privilege of appeal "at the legislative stage."

The bills in the Prentis case were brought in the circuit court to enjoin the Corporation Commission "from publishing or taking any other steps to enforce a certain order fixing passenger rates," 211 U. S. 223. From the dissenting opinion it appears, page 235, that a restraining order had been entered enjoining the commission from further proceeding until a hearing for an injunction *pendente lite*. Special appearance, objections to jurisdiction, and

finally demurrers and pleas were entered and upon overruling of demurrers and pleas, the defendant declining to answer further, a final decree *pro confesso* was entered, 211 U. S. 235-6. The court, therefore, proceeded upon the assumption that the order was made confiscatory and infringed the XIV amendment and stated that the question was whether "in spite of its constitutional invalidity it was one which the United States courts are not at liberty to impune", 211 U. S. 223. There was a question (page 323) as to whether the appeals would be too late; and the order was that if the appeals were entertained and the orders of the commission affirmed by the state supreme court, the bills might be dismissed without prejudice and filed again. What the court actually did, therefore, was to hold: This action was premature. Despite the fact that on the record we are to assume that the order is confiscatory, it was without the proprieties and erroneous at this stage for the circuit court to have enjoined the Virginia Corporation Commission "from publishing or taking any other steps to enforce" the confiscatory order. The relief asked by the railway company was that the publication of the order be restrained and that it should not be enforced at any time. If the court had intended that

it should not be enforced pending the appeal, it would surely have said so, knowing, as it did, that all steps, except the actual publication of the order, had been taken to make it effective and that such publication had been ordered. The order which this court made respecting the injunction had the necessary effect of permitting the publication and consequent taking effect of the order complained of, unless the state supreme court should exercise its authority to grant a writ of *supersedeas*; and this despite the fact that upon the record the enforcement of the order pending the appeal would lead to an *ad interim* confiscation. The judgment did not condition the renewal of the application for injunction upon how the state supreme court should act in respect of superseding the confiscatory order. What this court *did not do*, in the light of its knowledge as to the procedural steps defined by the Virginia Constitution, is as significant as what *it did do*.

But appellant affects to avoid this significance (p. 42, its brief), by asserting that this court "assumed that if the railways followed the procedure provided by the Constitution of the State, the rates would not be put into effect until they had been finally affirmed, etc.", i. e., assumed that the state

supreme court would grant a *supersedeas* pending the appeal. If this court had indulged this assumption it could readily and would certainly in some manner, have indicated the fact. It well knew that the granting of the *supersedeas* rested in the discretion of the supreme court of Virginia, and that that discretion was to be exercised upon the quality of the showing made by the railway company as to its being entitled to have the order superseded. It must have known that the state supreme court would supersede or not defendant upon its view of the requirements of justice. This court, recognizing that the authority and correlative duty was in and upon the state court to reach *its own judgment*, not only will not be thought to have assumed the exercise of that judgment, but in fact did not condition the intervention of the Federal courts upon the eventuation of that judgment to the satisfaction of the railway company. The most this court can be thought to have "assumed" in the premises was that "the same historical body that is entrusted with the preservation of the most valuable historical rights" would honestly and fairly adjudge. And, of course, this court did not even seem to do the adjudging required of the State court at the juncture of an ap-

plication for *supersedeas*. Not only so, but to think this court "assumed" that the state supreme court would exercise its discretion to the satisfaction of the railway company is to coincidentally think this court would violate the rule of comity and "equitable propriety" which its opinion was at such pains to declare and observe.

But, it is argued, this court stated in the *Prentis* case opinion that "the appellees were not bound to wait for proceedings brought to enforce the rate and to punish them for departing from it" (page 228), and also stated in effect that the railroads should have desisted from resorting to the Federal court until it was absolutely certain that State officials "would try to establish and *enforce* an unconstitutional rule" (p. 229), and also stated that the question to be decided by the supreme court of the State is legislative, "whether a certain rule shall be made," whereas, it is argued that in this case the rule has been made.

Concretely—the first quotation from the opinion occurs just following the statement that "litigation cannot arise until the moment of legislation is past" (p. 228); and immediately following the quoted portion is the reason upon which it is based, viz., that

enforcing the rate *by punishing* departure from it, would render relief in the Federal courts ineffectual because the punishment is judicial and not enjoined. Moreover, if the railroads should desist to protect their rights by appeal to the United States supreme court after final judgment, they would come with the facts already found against them. But the argument that the "enforcement" referred to is applicable to that enforcement which occurs between the time of the making of the order in the commission and the determination of the appeal by the supreme court sitting in an appellate legislative capacity and speaking the last legislative word, is entirely negatived by the subsequent portions of the paragraph. "The facts to be found" are not legislatively found until the final legislative authority finds them—the "moment of legislation" is not past until the supreme court acts. The question until that moment is past remains "whether a certain rule shall be made" for—"no rate is irrevocably fixed until the matter has been laid before the body having the last word." The railways were required to "make sure that the State in its final legislative action would not respect what they think their rights to be." The railroads were perfectly sure and on the state of the record it was judicially ascer-

tained that the order of the commission (which would unless suspended be effective until the "last word" spoken) did not respect their rights. But this was not sufficient, "a just recognition of the solicitude with which their rights have been guarded" by the Constitution of the State required that the railways should make sure as to the final legislative action. As the opinion points out (p. 231), it may be that the body having the last legislative word will establish a rate not open to complaint. Every presumption is in favor of the idea that that body would do justice, accustomed as it was and is to a nicer weighing of facts and more refined application of judicial principles.

Moreover, when in the quoted portion the opinion refers to establishing and enforcing and punishing the violation of an order it is perfectly clear that the order referred to is the final order. Otherwise the reiterated stress laid by the opinion upon the necessity for the passage of the legislative moment, the saying of the last legislative word, etc., is deprived of its obviously intended effect.

Academically it were interesting to discuss the nature of an unsuperseded order of the Commission pending appellate action thereon. In a sense it is

legislation. But it is of a tentative character. There is an analogy to an un superseded but appealed judgment by a court. Execution may issue upon it. This very case presents such an analogy. During the effectiveness of the restraining order a vast sum was collected by appellant beyond that permitted under the order of the Commission. When the District Court denied the interlocutory injunction that money was, strictly, returnable to patrons of appellant under the bond, for the disallowance of the interlocutory order *ipso facto* dissolved the restraining order. But tentatively and pending the decision of this Court, appellant retains this money, though it cannot continue to collect at the rate permitted by the restraining order.

This Court in its final action will determine the entire matter—and in the truest sense the matter is not determined at all until it shall have rendered its judgment. But equally the matter is meanwhile determined, for rights and conduct are being day by day governed by both the superseded and un-superseded portions of the previous actions of the District Court. The point is that the power of this Court is sufficient to accomplish justice whatever its judgment may be as to what justice requires. Equal-

ly is this true of the power of the Supreme Court of the State sitting as a legislative appellate body for (and the fundamental error into which appellant falls in its argument is omitting to consider this fact) if the State Supreme Court finds that the rate fixed by the Commission is unjust it is not only within its power but is its duty to substitute therefor rates which are just—*i. e.*, an order of its own—and by the express terms of the Constitution (both of Virginia and Oklahoma) this order relates back to the date of the original order. So, the utility could, and would be required to, collect at the substituted rate (*i. e.*, the difference between the amount actually collected under the old and the amount collectible under the substituted rate) for the commodity and service furnished pending the appeal. The accounting data is at hand to make this practical, being precisely the same as that upon which the return to patrons would be required to be made if the order had been superseded and then affirmed, and being of the same character as will be used if this Court affirms the order of the District Court, which would require the refund of excess collections made during the enforcement of the restraining order. So, at the commencement hereof the argu-

ment of appellant was described as one *ab inconvenienti*. The sole question is who is to sustain the burden of inconvenience during the process of completing the legislative procedure—who is, pending the appeal, to have the use of the money difference between the rates found just by the Commission and the rates found just at the end of the appeal. It is submitted that that argument of deprivation of constitutional rights is unsound which is not based on firmer foundations than this. This Court, when it handed down the opinion in the Prentis case, was fully cognizant of the requirement to substitute such an order as the Commission should have made (p. 224) and must have reflected that the thing which the court did and the application on all it said respecting “final legislative action,” etc., neither would nor could result in real injury to the railways.

The deductions drawn from the language of the several parts of the opinion, construed together, as to the applicability of the underlying principle of propriety to the *ad interim* effectiveness of the order are reinforced and confirmed by the analogy which the opinion draws with respect to the attitude of the court in habeas corpus (p. 229); for, the imprisonment, if wrongful, is effective just as truly as

the order, if wrongful, is effective, pending pursuit to conclusion of remedies afforded by state law. This difference, namely, that in a rate order under these constitutional provisions adequate remedy is afforded for *ad interim* losses, whereas in habeas corpus, nothing can remedy or restore the liberty lost meanwhile, further fortifies the argument.

Broadly, it is anomolous to argue that this Court meant, by anything said in the Prentis case, to indicate that while considerations of equitable fitness or propriety "and a regard for the solicitude the state had shown for the protection of the rights of the railroads," required the pursuit of the remedies afforded by the state before resort to the Federal courts, such considerations ceased to operate at the first intermediate point at which the railways found themselves dissatisfied and that such intermediate dissatisfaction relieved from the requirement to refrain from the Federal courts until final legislative action.

Another anomoly is presented: The District Court was asked to interfere to prevent the enforcement of the order, one of the grounds laid being that the State Supreme Court had refused to supersede the order. The effect of this refusal, as an adjudica-

tion is hereinafter considered. The matter is referred to at this place to stress the inconsistency of an attitude which must start with the admission that confidence in the state's administration required a pursuit of the remedy provided by the state, and must conclude with undermining that confidence at the first dissatisfaction with the exercise of the judgment confided in, without awaiting action upon the entire record certified up.

The contentions of appellant disregard the true philosophy of the rule of comity or equitable propriety applied in the Prentis case. The principle of comity was derived from the respect which one sovereign independent state, by its courts, accorded another sovereign independent state. The obligation to show this regard is the more onerous when applied to the relationship existing between the states and the Federal government. None now disputes the supremacy of the Federal Constitution and the duty and power of Federal courts to protect rights guaranteed thereby. But this same duty and power rests concurrently in the state courts. And the delicate adjustment of our governmental machinery and the maintenance of the desired and even necessary equilibrium between the states and the United

States points to the wisdom of the accommodation insofar as possible of the powers and processes of the two. *Ponzi v. Fessenden*, 258 U. S. 254-259. Modern industrial and economic conditions and the proper and accepted growth and exercise of the power of both state and federal regulatory bodies such as the Interstate Commerce Commission and the Corporation Commissions of Virginia and Oklahoma have not only given rise to many new questions but have stressed the wisdom of the avoidance of avoidable interference with the proceedings of bodies which are striving to solve the problems involved in this branch of governmental administration. The Prentis case was a notable example of the wisdom of this principle. Undoubted power was denied exercise in deference to the establishment of mutual respect, and out of regard to those proprieties the observances of which requires the growth of mutual confidence. Acquiescence in the argument advanced for the appellant would, it is submitted, be a retrogressive step by no means required by the exigencies of this case. The opinion says: "Our decision does not go upon a denial of the power to entertain the bills at the present stage but upon our views as to what is the most proper

and orderly course in cases of this sort when practicable, etc." The constitutional provisions of Oklahoma by the retroactive operation of a substituted order if found to be required renders practicable and even mandatory the reimbursement of any intermediate loss sustained, so that no necessity exists on any theory for permitting Federal judicial intervention at the present stage.

The failure to observe the distinctions and facts here urged by appellees resulted in the misinterpretation of the Prentis case in the *Love v. A., T. & S. F.* cases in 174 Fed. 59, 177 Fed 493, 185 Fed. 321. In fact it does not appear that the matter was presented in those cases as here. These distinctions and facts led two of the three judges below not to follow these cases, though they are from the Eighth Circuit and were urgently relied on below.

Nothing the United States Supreme Court has ever said with reference to the Prentis case has modified its effect as here *contended*, though the case has been cited and commented on in the following cases (cases citing on other points not included): *Bacon v. Rutland R. R. Co.*, 232 U. S. 137; *Wilcox v. Gas Co.*, 212 U. S. (l.c. 40); *Mellon Co. v. McCafferty*, 239 U. S. 136 (failure to have assessment reviewed in

Oklahoma State tribunals); *Dalton Mach. Co. v. Va.*, 236 U. S. 699, 701, where it is said: "The general principle is that it is not for the courts to stop officers of this kind from performing their statutory duty for fear that they should perform it wrongly." *Detroit & C. R. Co. v. Michigan R. Com.*, 235 U. S. 402-4.

See also the following cases citing the Prentis case on the point here pertinent, and supporting the position of defendants: *Wis.-Minn. L. & P. Co. v. Railroad Com.*, 267 Fed. 711, where the reasoning is cogent, and the statement respecting the invoking of the powers of the Commission by the utility and the pendency thereof of the case as to many towns is comparable to the situation of the complainants in invoking the rate-making powers of the Supreme Court and the continued pendency of the appeal: *Palermo Land & Lbr. Co. v. R. R. Comm.*, 227 Fed. 708, a very instructive case; *B. & M. R. R. v. Miles*, 218 Fed. 944.

The presumptions indulged in the Prentis case respecting the safeguards provided by Virginia upon exercise of the rate-making powers of her commission are to be indulged equally in Oklahoma's favor, and equally, as well, it is true that it is "only

a just recognition of the solicitude with which their rights have been guarded" requires here, as there, that "before resorting to courts of the United States" these complainants make sure that "the final legislative action" will not respect their rights.

Above, stress is laid upon the fact that by the provisions of the Constitution of Oklahoma the State Supreme Court would be required, in event it should conclude the order appealed from provides inadequate rates, to make a substituted order effective as of the date of the original order. This point was stressed in the District Court. Apparently anticipating a repetition of the argument in this court, appellant, in its brief and printed argument, devotes considerable space, commencing at page 80, in endeavoring to demonstrate that the Constitution of Oklahoma does not mean what it says when it declares "such substituted orders shall have the same force and effect (and none other) as if it had been entered by the Commission *at the time the original order appealed from* was entered."

It is only necessary to refute this anticipatory argument, in its various headings, as made, to point out:

1st. That the constitutional provision is so

clear as not to have needed any construction by the Oklahoma Supreme Court, and that the substituted order would not be retroactive within the meaning of the quoted portion of Section 23, Article 9, of the Oklahoma Constitution which relates to orders of *the Commission*, and which is found in the same section which, by express terms, makes the substituted order of the *Supreme Court* take effect as if it had been entered at the time the order appealed from was entered.

2nd. That the argument that no security is required of patrons in event the order is not superseded, whereas security is required of the utility to make refund in event it is superseded, can hardly be seriously considered; the former being altogether impractical and impossible and the latter being perfectly practical and possible, it not being contended that the provisions of the Constitution of Oklahoma in this respect violates any constitutional principle. It might be stated, however, that the deposits made by domestic consumers is certainly some security, and that, as a practical matter, both the State Supreme Court and the Commission could and would protect the utility by not requiring further service to any patron until such pa-

tron had paid the lawful rates of the substituted order for the *ad iterim* period—which, of course, would in substantially every case practically enforce payment.

3rd. That what has just been said was recognized in the case of *Southwestern Bell Telephone Company v. Danaher*, 238 U. S. 482, under the principle of which the utility could not be punished for refusing to serve one delinquent in past rates due for service *ad iterim* the original and the substituted order. Moreover, the argument as to taking property without just compensation indulged by appellant appears strained, since the courts would be open for recovery in event payment were not procured as pointed out above; and,

4th. That the argument anticipating injustice at the hands of the Supreme Court is not only ungraceful, but is one which this court refused to sanction in the Prentis case. Further, it leaves out of consideration the power of the Federal Court, if it should condemn the rate fixed in the last legislative step, to make such provision for payment by the patrons, a substantially uniform and continuous body, as would reimburse the utility for any loss sustained meanwhile.

### THE RES ADJUDICATA QUESTION.

In the bill of complaint, Transcript 46, the complainant alleged that it had applied to the Supreme Court of Oklahoma for a supersedeas suspending the enforcement of the order of the Corporation Commission pending the appeal, asking authority to put into effect reasonable and proper rates, and that the Supreme Court of Oklahoma had refused to grant such supersedeas. It was contended by appellees below that the refusal of the State Supreme Court to supersede the order constituted an adjudication of appellant's right to have the order superseded pending the appeal, its right so to do having been presented in the Supreme Court on precisely the same grounds as those set out in its bill of complaint in the District Court. District Judge Cotteral, on this question, says:

“In the first place, the State Supreme Court, in the case of Oklahoma Natural Gas Company, while doubting the authority for a supersedeas, has rested a denial of it *on the ground that there was an insufficient showing by the Gas Company*. Putting aside the supposed effect of this decision, illustrative of the views of that court, as an adjudication, the allowance of a temporary injunction necessarily involves a review and revision of the same. This the proprieties would hardly sanction, if it is avoidable.”

Appellees considered, and yet consider, that this is more than a question of propriety, and is one which goes to the right to maintain the bill in the United States Court to accomplish the same result, upon the same grounds and for the same period of time as involved in the District Court proceeding.

Appellant seeks to avoid the ordinary operation of the principle of *res adjudicata* by arguing that because the application for supersedeas was made in an appealed legislative rate-making case in the review of which the Supreme Court of Oklahoma acts legislatively, and, in a sense, as a supreme corporation commission rather than a supreme court, the action of the Supreme Court upon the application was consequently legislative. Whereas, the appellees contend that the question as to whether the denial of the supersedeas was a legislative or judicial act depends neither upon the predominant character of the body before which the application was made nor upon the character of the proceeding in which the application was filed, but rather upon the quality and character of the action invoked. The Prentis case settled that under the constitutional provisions such as those of Oklahoma and Virginia the affirmance or substitution of a rate order by the

State Supreme Court is a legislative act. But, in that case and as well in the case of *Oklahoma Operating Co. v. Love*, 252 U. S. 331, 335, it is recognized that legislative, executive and judicial powers are united and combined in the Corporation Commission, and that in some respects the Commission, and hence the court, may act judicially as well as legislatively in respect of orders in proceedings before the Commission and on appeal before this Court. The Oklahoma Supreme Court has frequently pointed out the same fact. *A., T. & S. F. Ry. Co. v. State*, 23 Okla. 510.

The question is, then, not whether the Supreme Court in some matters pertaining to rate orders acts legislatively and in some judicially, but, rather, was it acting legislatively or judicially in a given case. Rules to determine the matter have been frequently stated, perhaps never more clearly than in the *Prentis* case, where it is said (211 U. S. 226):

“A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule

for the future and therefore is an act legislative not judicial in kind."

At page 227 it is said:

"But the effect of the inquiry, and of the decision upon it, is determined by the nature of the act to which the inquiry and decision lead up. \* \* \* The nature of the final act determines the nature of the previous inquiry."

Judge Cooley, in his *Constitutional Limitations*, 7th Edition, page 132, says that it is the absolute province of the judiciary to protect the rights and interests of individual citizens and to that end to construe and apply the law as being enforced; adding:

"And it is said that that which distinguishes a judicial from a legislative act is that the one is a determination of what the existing law is in relation to some existing thing already done or happened, while the other is a predetermination of what the law shall be for the regulation of all future cases falling under its provisions."

The distinction between a legislative and a judicial act in such cases is well stated by Judge Williams, formerly of the Oklahoma Supreme Court, now United States Judge for the Eastern District of Oklahoma, in *A., T. & S. F. Ry. Co. v. State*, 23 Okla. 510, 552:

"This court, when reviewing an appeal from

such an order, is not passing upon the question as to whether or not the order in effect confiscates the property of the appellant, or takes it without due process of law, except in a legislative capacity by virtue of Section 22, Art. 9, *supra*, in considering and determining the reasonableness and justness of the action of the commission appealed from, as well as any other matter arising under such appeal, supported by the *prima facie* presumption that such action of the commission shall be regarded as *prima facie* just, reasonable and correct. However, should this Court sit as a court judicially to determine whether or not a rate fixed by virtue of an act of the legislature or of a commission created by law for such purpose should be set aside and annulled on the ground that it violates the constitutional rights of the carrier to that degree that it amounts to a taking of property without proper compensation, or without due process of law, a different rule would govern. In that case the judiciary in a judicial capacity would be sought to interfere to protect against a violation of the federal or state Constitution, and the rule in such case would be that before the court would interfere it must clearly appear that the rate or act complained of was confiscatory. But in the exercise of its peculiar jurisdiction as a legislative body, in reviewing the action of the Corporation Commission, the duty of this court is marked out in the Constitution, and that is to determine whether or not such order appealed from was reasonable, just, and correct, supported by the *prima facie* presumption in favor of the action of the commission that it is reasonable and just."

In *Detroit & Mackinac Ry. Co. v. Michigan R. R. Comm.*, 235 U. S. 402, 406, this Court notes the distinction between "The judicial function of declaring a rate unreasonable and the legislative one establishing a rate as reasonable."

Now, to test the quality, whether legislative or judicial, of the order of the Oklahoma Supreme Court refusing to supersede:

First. Appellant contends that the Constitution of Oklahoma forbids judicial interference by any court of the State with the rate orders of the Commission and quotes a portion of section 20, article 9, of the Constitution. The constitutional provisions here pertinent are as follows:

Article IX, Section 20:

"No court of this State (except the Supreme Court, by way of appeals as herein authorized) shall have jurisdiction to review, reverse, correct or annul any action of the Commission within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties: *Provided*, however, that the writs of mandamus and prohibition shall lie from the Supreme Court to the Commission in all cases where such writs, respectively, would lie to any inferior court, or officer."

Article IX, Section 21, provides:

“Upon the granting of an appeal, a writ of supersedeas may be awarded by the Supreme Court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the Supreme Court, no action of the Commission prescribing or affecting the rates, charges, or classifications of traffic of any transportation or transmission company shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceeding resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by the Commission (or approval, on review, by the Supreme Court), payable to the State, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal.”

From the above quotation from Section 20 it appears that while the intent, generally, was that inferior courts should not have jurisdiction to interfere with any action of the Commission within the scope of its authority, yet that the Supreme Court should have this authority, which should embrace the power to annul, suspend, delay, enjoin and restrain with respect to the Commission's

orders and authority. True, the limitation upon the authority of the Supreme Court in these respects is that it must be "by way of appeals as herein authorized," but the idiom "by way of" simply means and can mean nothing other than "in or in connection with appellate proceedings." Moreover, the Supreme Court "as herein authorized" may annul any action of the Commission within the scope of its authority. One of the methods authorized, as appears from the above quotation from Section 21, in Article IX of the Constitution, is by awarding the writ of supersedeas which shall suspend the operation of the action appealed from. This was what appellant asked the Supreme Court to do. Now, "writs" are issued in judicial proceedings, and "award" is a term which denotes judicial consideration and action. The Oklahoma Supreme Court actually exercised jurisdiction of the application for supersedeas and refused, on the merits, to award the writ. But, measured by the test laid down for determining whether a given action is legislative or judicial, it certainly cannot be thought that the awarding of a writ of supersedeas makes a law or prescribes a rule for future action. That idea simply is not involved in the expression. In fact, the effect of the awarding of a writ is, by the language

of Section 21, *supra*, "to suspend the operation" of the action appealed from. That is, it strikes down a law which except for the awarding of the writ would operate. But the inquiry required to be made before striking down the law would not involve the consideration of facts pertinent to the making of a new rule to be applied thereafter, but would require an investigation of existing facts to determine whether the existing law should be struck down.

Second. It will be noted from Judge Cottrell's statement that the denial of the supersedeas was upon the merits. That is, the State court held in effect that the application therefor failed to show facts sufficient to entitle the plaintiff to the relief asked. The order of the Commission had increased the rate theretofore in effect. Hence the application for supersedeas was not for the purpose of procuring the continuance, pending the appeal, of the antecedent rate. The attack upon the order in the State court, precisely as in the Federal court, rested upon the contention that even the increased rate prescribed by the order of the Commission was confiscatory. The position of the appellant throughout has been that it is as truly an invasion of its constitutional rights to confiscate its property during

the pendency of an appeal as to confiscate it after the final determination of an appeal. The supersedeas proceedings in the State Supreme Court were instituted to thwart such *ad interim* confiscation. By Section 22 of Article IX of the Oklahoma Constitution, the Supreme Court, in determining the appeal, could consider and base its action only upon the evidence in the record as adduced upon the Commission. The preparation for submission of the abstracts of the appeal record, the argument thereof, the examination of an enormous mass of evidence by the Supreme Court, the consideration of the briefs and authorities of the parties to the appeal, of necessity, involve the expenditure and passage of time. The appellant, conceiving that the delay incident to this process would be harmful to it, prepared its showing and marshalled its facts, deemed to demonstrate that the order involved in the appeal was confiscatory, and rested on its constitutional rights. So, the Supreme Court did not make any finding or determination upon the record in the appeal, which alone it could consider in acting legislatively to make a rate; but on the contrary considered, and could have considered, only the sufficiency of the facts shown in the application for super-

sedes placed before it by the appellant. It was not asked to make a rate order, nor to pass on facts proper for consideration in making a rate order, but was asked to hold a presently enforced rate order void and suspend it pending the time it could reach and make a lawful rate order. If, instead of refusing the application, it had granted it, it could and would have granted the relief sought not by way of making a new order but solely by way of determining that the order attacked was an unconstitutional order in that it resulted in confiscation. Under the principles hereinbefore quoted by which the legislative or judicial quality of a given act is determined, and particularly within the reasoning of the Oklahoma court (23 Okla. 510, 552), it is submitted that the exercise of judicial authority was invoked and judicial authority was exercised by the Oklahoma Supreme Court when, passing on the merits, it declared that appellant had not made a case showing itself entitled to a supersedeas. It is not insignificant of the judicial quality of the supersedeas proceedings in the State court that if the appellant had there, on the same complaint and showing which it later made in the Federal court, secured exactly the same character of relief which it later sought in the Federal court, the later relief would not have been

asked. It chose its first forum and having chosen must abide the consequence of its choice. Napa Valley case, 251 U. S. 366.

Third. It is true, of course, that the appellant asked the Supreme Court that it be permitted ("authorized" was the word used) pending the determination of the appeal, to collect rates in advance of those prescribed by the order. But this is not the making of a rule for the future within the sense of the expression in the Prentis case. It is not more than, or other or different from, the prayer in its bill in the United States District Court. This contemplated that if the court should reach the conclusion that the operation of the rate order, pending the appeal, would amount to an *ad interim* confiscation and should be enjoined, it would nevertheless, in recognition of the fact that some rate must be collected between the time of the application and the time when the appeal shall be determined, "fix terms" upon which the injunction should issue, i. e., condition the injunction that the appellant do not meanwhile collect more than a named rate. The difference is that between a *permitted* and a *prescribed* rate. The United States District Court could and did, preliminarily, *permit*, though it cer-

tainly could not have *prescribed*, an advanced rate. Likewise on the supersedeas the Supreme Court could *permit* a rate, but its only power to *prescribe* a rate was either by affirming the order or by making a substituted order, and this only after it had, upon full consideration of the record sent up by the Commission, determined "the reasonableness and justness of the action of the Commission appealed from"—which, as is pointed out by Judge Williams in 23 Okla. 510, *supra*, is a different thing from adjudging that an order "should be annulled on the ground that it violates \* \* \* constitutional rights."

Fourth. If it should be urged that the application was for a legislative order fixing the rate pending the appeal, nevertheless before the court could grant this relief it would have first to determine if the rate enforced *pendente* would confiscate the company's property and invade its constitutional rights. This would involve a decision of existing facts and on existing and presently enforced laws and under the test would be judicial. But the Supreme Court did not get past this point. On the contrary, having decided that the company had failed to establish its claim on an unconstitutional invasion of its rights, it never reached the state of

prescribing what rates should be applied. Such a contention is untenable in any event; because if the Supreme Court had decided that the order complained of was confiscatory the declaration of that body would have been in effect the same as that of Judge Cottrel when he issued the temporary restraining order, viz., that the operation of the order will be suspended provided complainant do not put in force a rate in excess of such and such an amount and on condition, moreover, that complainant give a bond to refund in event it be ultimately determined that the rate should not have been suspended. The distinction clearly is between the suspension on conditions, and the making of a different rule for future action.

Fifth. But, it is stated that "no one will contend" that a writ of error would lie to the Supreme Court of the United States from the action of the State Supreme Court denying the supersedeas. What court has ever decided that a writ of error would not lie under such circumstances, and why should it not lie? The State Supreme Court purported to act judicially. It refused to issue a judicial writ. It held that the application failed to state *facts* sufficient to entitle the plaintiffs to super-

sedes. This determined a question of law, within the peculiar province of a judicial tribunal, and was equivalent to sustaining a demurrer and adjudicating the insufficiency of the showing. What is to prevent the complainants from presenting their claims of confiscation and of invasion of their federal constitutional rights, properly raised in the application, to the Supreme Court of the United States? Appellees find no authority which would prevent this, and appellant cites none. It is submitted that the question is adjudicated.

If the Supreme Court in denying the supersedeas acted judicially the principle of the Napa Valley case, 251 U. S. 366, applies. Here, as there, it appears that "the denial of the petition was necessarily a final determination based upon identical rights asserted in this court." The Napa Valley case and this is particularly emphasized in the same case in the District Court, 57 Fed. 197, is authority for the statement that the absence of an opinion by the Supreme Court did not affect the quality of the decision or detract from its efficacy as a judgment upon the question presented, and its consequent conclusive effect upon the rights of the company. By the same token the adjudicative efficacy of the ac-

tion of the Supreme Court in refusing supersedeas cannot be affected by the question as to whether or not this court would have reached the same conclusion.

### THE CASE ON THE MERITS.

The principal burden of complaint of appellant is that the order of the Corporation Commission here involved is confiscatory *on its face*. Appellees submit that this is not the issue, and that the only question in this case is whether the rate fixed by the order would, under conditions existing at the time of the institution of the suit in the district court, and reasonably to be expected to continue, result in confiscation. The distinction is obvious. The court said, in *Galveston Electric Company v. Galveston*, — U. S. —, 66 L. ed. 382, 388:

“A rate ordinance invalid when adopted may later become valid just as an ordinance, valid when made, may become invalid by change in conditions.”

The District Court did not sit to correct errors alleged to have been committed by the Corporation Commission. That is the function of the State Supreme Court.

Moreover, the Corporation Commission of Okla-

homa is not the only party defendant. The cities of Tulsa, Sapulpa, and Claremore, with their city attorneys, and the Attorney General of Oklahoma are made parties, conceivably because the inhabitants of these cities and generally of the State of Oklahoma, are, as patrons, interested in the outcome of the litigation. Those representing the public may not themselves be satisfied with all of the findings of the Commission, all of the statements made in the order of the Commission and the rates prescribed. Conceivably, also, those thus appearing in the interest of the public find themselves confronted with a ready-made record, not altogether to their liking or in accord with their conception as to what the real facts are, but without means or facilities for doing more or other than search the records before the Commission in this and other proceedings, the sworn annual and other reports of appellant, and its tax records, and abstract therefrom sworn testimony of appellant's own employees and officers with which to confront appellant and refute its present extravagant claims.

This consideration stresses the proposition first advanced; and in view of this, the numerous arguments of appellant, drawn from the order in ques-

tion and based upon the erroneous assumption that the order alone proves the facts from which the arguments are deduced, must be heavily discounted. For example, appellant characterizes as "a pure afterthought" the contention of appellees that under the public utility act (chapter 93, p. 150, Sess. L. Okla. 1913) it was improper to consider the purely production as distinguished from the transmission and distribution properties of appellant, and to consider the expenses incurred in operating the purely production as distinguished from its purely transmission and distributing properties, in determining the value of the public utility property and the expense of conducting the public utility enterprise of appellant. And, apparently, as a sufficient refutation of the entire position of appellees in this respect, appellant asserts that the Corporation Commission did include the production properties and expense in reaching the values which it found and in fixing the rate. But, since the issue here is not whether the Corporation Commission proceeded properly or improperly, or whether or not it committed error, but whether or not the rates prescribed will result in confiscation under conditions existing when the suit was brought, the use of an epithet will not settle the issue. Because the

question has been in this case from the time of the Answer and its answer depends on the validity of the contention and not upon whether the contention had been thought of since the rate order was made. Moreover, though the Commission may in some cases, without having had the question called to attention or without careful analysis of the public utility act, have erroneously assumed that the production properties were properly to be considered in fixing a rate base and calculating expense, this fact furnishes no reason to require the public to acquiesce in the perpetuation of the error, nor does it furnish a reason to estop the Commission itself, after realizing the error, to urge the point in defense of this entirely separate suit. The same considerations are involved with respect to other questions urged by appellees, who in this suit have the right to, and do, urge in defense to the claims of appellant, such facts and inferences deducible therefrom as are now deemed fairly to contravert the facts and claims of appellant—this regardless of whether such facts were in evidence before the Corporation Commission, or if before the Corporation Commission, were overlooked, misinterpreted, not given proper weight or consideration,

or were erroneously considered. Appellees conceive they should not be deterred from so doing by appellant's carefully selected collection of decrying adjectives.

No matter how clearly appellant may establish error, mistake or inconsistency in the Commission, it would not thereby establish the correctness of its own position.

Moreover, even if the Commission made mistakes, if for example, it was improper for the Commission to have included in its order a statement that it had knowledge that the cost of gas, due to the discovery of new pools and increased supply had materially decreased since the hearing, not only can that matter properly be determined only in the legislative appeal in the Supreme Court of the State, but the Corporation Commission of Oklahoma in its answer is offering to hear, reconsider, and rectify any error or mistake in this or any other matter which appellant claims to have been made in respect of the facts considered or the rate prescribed, and make a readjustment of rates based upon evidence which the Company may desire to submit in supplemental or additional proceedings (Defendant's Answer, 2, 52, 54, 55). The Constitution of

Oklahoma provides that the pendency of an appeal from an order of the Corporation Commission does not suspend the power of the Commission to engage in such inquiry. Section 23, Article 9, Const.

This offer, coupled with power to reconsider any matter with respect to which appellant deems the order of the Commission erroneous, cannot be considered as mere artful subterfuge. The history of rate applications and orders of the appellant in its transactions before the Commission appear in this record, and is largely parallel to that which this court commented upon in the case of *Galveston Electric Company v. Galveston*, — U. S. —, 66 L. ed. 383, where it is said:

‘There was no suggestion that the action of the Board evidenced hostility to the utility, or that the Board was arbitrary or hasty. It had theretofore been considerate of the Company’s rights and needs. When prices rose rapidly in 1918, it raised the fare limit to six cents, although the franchise ordinance prescribed the five cent fare. \* \* \* Its reduction of the fare by ordinance of June 5, 1919, was made after hearing, and was doubtless due to the conviction, shared by many, that, with the cessation of hostilities and the negotiation of the Peace Treaty, prices and operating cost would fall abruptly. \* \* \* There is no reason to believe that the Board would not give full and fair consideration to a proposed change in rate if application were now made to it.’

It appears from the Answer, and it is undenied (Tr. 57), that from the date of the organization of appellant in 1907 or 1908, until April 18, 1918, the rates received by appellant were of its own fixing, and voluntarily put in force, and not until the latter date did the appellant ask for any modification in rates. Pursuant to this application of July 21, 1918, the Commission readjusted and increased the rates. Appellant did not indicate any dissatisfaction with this increase, moved for no rehearing, and did not appeal. It thereafter, on September 1, 1919, made another application for increase, which was granted and acquiesced in, these increases having been temporary to meet the emergency which the appellant alleged itself to be laboring under (Tr. 52). The principal purpose of the order appealed from was, as asked by appellant, to abrogate and set aside the divisional contract which the appellant had made with the principal distributing company, the Oklahoma Gas & Electric Company, so that instead of receiving compensation for gas furnished the local distributing company in the form of a division of amounts collected by the local distributing company therefor, a rate should be fixed which should be paid by the local purchasing and distributing cor-

poration based on measurements at the city gate. Under the old divisional contracts the Oklahoma Natural Gas Company, as a transmission company, had been compelled to bear the burden of the leakage sustained in the local distributing plants of the Muskogee, Oklahoma City, and other local distributing plants. As will be seen from the order, a large portion thereof is taken up with a discussion of the divisional contracts and of the necessity in the public interest and in the interest of the Oklahoma Natural Gas Company, that they be abrogated and the city gate rate method of compensation be substituted. The principal object of the entire proceeding was to conform to an opinion in the Supreme Court of Oklahoma in an action in prohibition instituted by a local distributing company laying down the rule which would govern the authority of the Commission to set aside the divisional contracts (Tr. p. 75; also Tr. p. 71 to 83). As disclosed by the answer, this burden, which theretofore rested upon the Oklahoma Natural Gas Company, to bear the entire leakage in the local distributing plants in the principal cities of Oklahoma, over which plants it had no supervision or control, and the state of leakage in which it could not remedy, was required to be relieved. But, the process of its relief involved

unknown elements; for example, the extent of this local plant leakage was estimated and not definitely known. Only experience under the gate rate plan could determine, because of this unknown element, just what would be the result of the operation of the city gate principle of compensation under any rate that might be prescribed. Hence, in the nature of things, the rate order appealed from was largely an experiment. The situation again is analagous to that existing in the Galveston case, where this court pointed out that it was thought that the element of expense resulting from the negotiations of the Peace Treaty would speedily change conditions. In fact, the circumstance that the Oklahoma Natural Gas Company permitted almost the entire time allowed for an appeal to expire before lodging its appeal in the Supreme Court of Oklahoma, indicates that it was uncertain as to what the result of the experiment would be.

So, the offer and tender made by the Corporation Commission to reconsider any matter wherein its order was mistaken or wherein experience has demonstrated the rate therein fixed to have been insufficient, was not only fairly predicated upon the situation existing and the uncertainty involved in that situation, but was, additionally, in view of the

experience which this company had had in pre-existing emergencies and under former applications, no one of which has ever been futile, an offer from which appellant might justifiably have expected all needed results. Yet, though at the time of preparing this brief a period to exceed one and one-half years has elapsed from the effectual date of the order complained of, appellant has not availed itself of means of relief which, if its situation is as it claims, it had a right to ask, and which past experience warranted it in expecting at the hands of the Commission. Instead, it concerted with other utilities in a common supplication to the Federal court for interference with the orderly administration of the state's rate making processes.

This case was heard in the District Court purely on verified bill, verified answer, and affidavits, without opportunity for cross examination, without exhibition of the numerous accounting records of appellant, and as an examination of the affidavits in defense will disclose, was, insofar as appellees are concerned, principally presented by way of exhibitions of sworn testimony of appellant's own witnesses in various hearings, and analyses of appellant's own sworn reports. In the method of presen-

tation the court below had, and this court has, no such exhaustive records or evidence before it and no data upon which findings may with certainty and definite reliability be predicated as in the *Galveston Electric Company* case, — U. S. —, 66 L. ed. 382, or the case of *Newton v. Consolidated Gas Company*, — U. S. —, 66 L. ed. 305, in each of which the court, after hearing and report by special master, had all the facts before it.

But, though presented incompletely and under difficulty, the record shows that much, as respects the value of properties, rests upon estimates of expert witnesses employed by the parties (*Knoxville v. Knoxville Water Company*, 212 U. S. 1, 18), that the same presents conflicting opinions as to practically every proposition (*Wilcox v. Consolidated Gas Company*, 212 U. S. 19), and that such issues are raised as that the case falls within the principle of *San Diego Land & Town Company v. National City*, 174 U. S. 739, 754, where it is said:

“Judicial interference should never occur unless the case presents, clearly and beyond all doubt, such a flagrant attack under the guise of regulation as to compel the court to say that the rate prescribed will necessarily have the effect to deny just compensation for private property taken for the public use.”

This especially in view of the presumption which this court has indulged, stated and followed "from the foundation of the government" in favor of the validity of the rates. *United States v. Gettysburg Electric Railway Co.*, 160 U. S. 668. Moreover, the period of time elapsed from the taking effect of the rate, July 1, 1921 (Tr. p. 99), to the time of the filing of the bill of complaint, December 12, 1921, was so short and the period of such unusual temperatures, which are reflected in the consumption of gas, and competitive conditions as respecting other fuels so unusual (Tr. p. 60-61), as that no adequate period had elapsed to test the sufficiency of the rate. *Wilcox v. Consolidated Gas Company*, 212 U. S. 19. And, in view of the many doubtful items and many items subject to sharp contest, it is submitted that in the absence of an actual and timely test the rate should not be struck down. *Lincoln v. Lincoln G. & E. Co.*, 250 U. S. 358. Under the circumstances, therefore, and in addition to the question of prematurity hereinbefore presented, the wisdom and applicability of the following observation from the Wisconsin-Minnesota L. & P. Company case, 267 Fed. 711, 772, is suggested:

"If, therefore, it be assumed that the equitable jurisdiction could ultimately prevail, there

is none the less established a policy whereunder the system of regulating public utilities may be made nominal only; the real regulation being conducted in equity. We believe that the plaintiff's bill discloses this very infirmity, and, if the jurisdiction were exercised, this result would follow in the particular case before us, and that regulation by the defendant tribunal would amount to nothing, because the proceedings pending before it could at all times be frustrated in the accomplishment of their object through the concurrent exercise of the equitable power, which latter, of course, if not resorted to for the purpose of dominating it, ought not to be resorted to at all *until finality of action by the state can be asserted.*"

#### **THE PRODUCTION PROPERTIES AND EXPENSES NOT PROPERLY CONSIDERABLE.**

The properties of appellant may be divided into these classes:

- (a) Those embraced within its oil division;
- (b) Those embraced within its gasoline division;
- (c) Those embraced within its production division;
- (d) Those embraced within its transmission division; and,
- (e) Its local distributing plants.

Appellant concedes that its oil and gasoline properties are held in a private and not in a public utility capacity. Appellees concede that its transmission and its local distributing properties are public utilities. The parties diverge in their views respecting the gas production properties. Appellant claims that its production properties are devoted to the public use and are embraced within the definition of public utilities found in Chapter 93, page 150, of the Session Laws, Okla. 1913; whereas, appellees claim that the gas production properties of appellant are not public utilities within the meaning of the act; that consequently the Corporation Commission was not, for rate making purposes, vested with jurisdiction over those properties, and that, therefore, it could not consider either their value or their operating expenses in fixing the rate.

Concededly, the attacked order does embrace the production properties in reaching a rate base valuation. In the Answer, (Tr. 53), it is stated that the commission did not find itself able from the data at hand to separate the production and transmission systems and that for the purpose of making a rate at that time and affording to the appellant such relief as under the then circumstances was pos-

sible, the commission had considered as embraced within the properties used in serving the public, both the production and transmission systems; that is, the purely private property as well as that affected with public interest.

Prior to the enactment of the 1913 public utility law, the Supreme Court of Oklahoma had held that the commission, being a body of limited powers, had no jurisdiction to make rates for companies serving the public with gas. *Shawnee Gas & Electric Company v. Corporation Commission*, 35 Okl. 454. Following this decision the 1913 law was enacted. Section 1 thereof reads:

"Section 1. The term 'public utility,' as used in this act, shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, except cities, towns, or other bodies politic, that now or hereafter may own, operate, or manage any plant or equipment, or any part thereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public.

"(a) For the conveyance of gas by pipe line.

"(b) For the production, transmission, delivery or furnishing of heat or light with gas.

"(c) For the production, transmission, delivery or furnishing electric current for light, heat or power.

“(d) For the transportation, delivery or furnishing of water for domestic purposes or for power.

“The term ‘Commission’ shall be taken to mean Corporation Commission of Oklahoma.”

Section 4 thereof reads:

“Section 4. In case of the owner or operator of any public utility is engaged in carrying on any other business in connection with the operation of such public utility the Commission may require the cost of the operation and gross revenues of such joint business to be kept in such form and manner as may be prescribed by the Commission so that the cost of the operation and gross revenues of the public utility may be ascertained.”

It is clear from Section 4, *supra*, that a company may in some of its capacities and business and with respect to some of its property be a public utility within the meaning of the definition of that phase as used in Section 1, and in other of its capacities and as respects other of its properties be purely a private corporation. Appellant admittedly illustrates this proposition in respect of its oil and gasoline properties. Under subdivision (a) of Section 1 of the act, above quoted, it is clear that the only gas business that is to be deemed public is in respect of the commodity or equipment devoted to the

conveyance of gas by pipe line. Clause (b) cannot apply because that relates to the *production* of *light and heat with gas*, not *with the production of gas for the purpose of producing heat or light*.

No other subdivision of the section can remotely embrace any business of appellant. The transmission properties of appellant is used for the conveyance of gas by pipe line, and is properly within the act; but certainly a gas lease cannot be useful for the conveyance of gas, though it is useful for the production of gas. The drilling of a well is likewise useful in the production of gas, though not for its conveyance. No more would the drilling of an oil well be useful for the conveyance of oil. The terminology of the accounting method of appellant itself is sufficient to distinguish between what may be properly classified as useful in conveyance as distinguished from useful in production. Appellant's argument that gas must be drilled for and found before it can be transported, and that hence its production is a necessary incident to its transportation, and that its properties devoted to production are essential to its transportation service, is as fallacious as would be the claim of a company which used coal to generate its electric current

that coal mines, machinery and properties owned by it and from which it produced its coal, should be valued and included in a rate base, and that the expense of its mining operations should be embraced in its operating expense account in ascertaining a proper rate to be paid by purchasers of electric current.

It might have been competent for the legislature of Oklahoma to have declared that the production of gas in connection with service to the public should be affected with the public interest. This was substantially what was done in West Virginia where "all gas companies" were declared public utilities. *Clarksburg Light & Heat Company v. Public Service Commission*, 100 S. E. 551. But, obviously, the Oklahoma Legislature did not do this. Appellant cites two cases, both in 1917, in which the Commission indicated the propriety of considering production expense and properties in fixing rates of gas companies. It does not appear that the question here presented was raised in those two cases. The Supreme Court of Oklahoma had not construed the 1913 act as regards this question. The matter is one of first impression and the Commission, in its verified Answer, shows, since the

question has been raised, that it is convinced that its jurisdiction is limited. The wisdom of the legislative policy manifested by the terms of the act is conclusively shown by the experience of this company. Whereas, the company actually purchases more gas than it sells, its production expense is substantially equal to the total price it pays for all the gas which it buys (Tr. 237, 238). Approximately \$855,000 was spent in 1919 for drilling operations and a majority, by far, of the wells drilled were dry holes; and, "We drilled thirty dry holes out of the first forty wells we drilled this year," (1920, and in 1917 "We have drilled 21 straight dry holes on the Osage lease and we have lost a lot of money on it." As indicating the state of mind of officers of the Company in 1917, the following excerpt from the testimony of the then Vice-President, Bartlett, is most illuminating:

"Q. You remember at a former hearing you were discussing the effect that a reversed graduated scale would have on the earnings of the natural gas company and you promised to submit three estimates. Have you prepared those reports?

A. I told you, judge, after the hearing, that I wasn't an auditor and didn't pay an attention to that and it wouldn't do any good to

submit them for the simple reason the Commission would not take that into consideration. There is no use of us telling the Commission we need a dollar a thousand for gas because they will figure that up and see what we are entitled to. We are entitled to a reasonable return and are entitled to make a reasonable return.

Commissioner Echols: Read that question, please.

(Reporter reads question.)

Commissioner Echols: As I understand your answer, you haven't prepared them?

A. I haven't prepared them. I might go ahead and say we need a dollar a thousand for gas.

Commissioner Echols: It is just a matter of mathematical calculation.

A. Yes, it is a matter of what we are entitled to and it is only a matter the Commission will consider. *I might say we should have a million dollars to go out and gamble on additional wells and lines and so farth, but how far would that go with the Commission to get a rate?"*

This Vice-President of appellant obviously recognized what must be apparent, viz.: The incongruity of a public utility's engaging in that variety of speculation which manifests itself in "wild-catting for gas." So doing is abhorrent to every conception of the proprieties to be observed in the conduct of a

business in which contributions in the form of rates are exacted from the public.

The Legislature of Oklahoma in defining "utility," wisely, therefore, refrained from embracing in the statutory definition any idea which would make possible compulsory contributions from the public to produce a fund for use either in gratifying the curiosity or in tragically dashing the high hopes of the seer who entertains what the initiated term "a wild-cat hunch."

This is not to condemn the explorer or the process of exploration. The economic value of the hazarding of his resources in speculative drilling for oil or gas must not be minimized. If he loses, it is his own loss. If he succeeds, the gains are his—witness the purchase, formerly, of the entire gas produced from the well for \$100.00 per year, or the purchase of gas at  $2\frac{1}{2}c$  and its sale for 25c; witness the entire elimination from the capital assets list of appellant of its Hog-Shootel properties for which it issued \$4,000,000 of its capital stock and the production largely therefrom and from other sources of property now claimed to have a value of \$20,000,000 (See discussion *infra*). Enforced contributions from the public, however, have no place in such a

business and the Legislature of Oklahoma has not made possible exactions from the public for such purposes.

If the position of appellees respecting the limitations of the Act of 1913, defining "public utilities," is correct, as it is submitted to be, then appellant must be denied relief. For, in such event, it has failed to sustain the burden resting upon it, that, to entitle itself to relief, it should demonstrate beyond question that the rate will result in confiscation.

*San Diego Land & Town Co. v. Jasper*,  
U. S. 139;

*San Diego Land & Town Co. v. National City*, 134 U. S. 179;

*Ex Parte Young*, 209 U. S. 123<sup>4</sup>;

*Knoxville v. Knoxville Water Co.*, 212  
U. S. 1;

*Louisiana R. R. Com. v. Cumberland T. & T. Co.*, 212 U. S. 414;

*Minnesota Rate Cases*, 230 U. S. 352.

The principle of these cases applies because, though the Answer clearly presented the issue as to whether it was proper to include the production properties in valuation, and the expense of operating the production properties, as an operating expense, to be deducted from gross revenue in order ascertain

net income, appellant failed utterly to disclose, separately, either the value of its purely public utility properties within the meaning here claimed in the purely public utility operating expense, within such meaning. By reason of this failure, the record cannot be made to disclose these two essential prerequisites to the determination of the rate required to avoid confiscation.

#### **THE CASE AS MADE, PRODUCTION PROPERTIES AND EXPENSES INCLUDED.**

The case of appellant is set up on the theory that it is proper to include the production properties in the valuation and the expense incident to the production of gas as an operating expense. Even on such basis, however, appellant's showing is, it is submitted, altogether insufficient.

Appellant claims that the present fair value of its production, transmission, and local distributing properties is \$20,000,000 (Tr. 6). Just how this figure is reached does not appear, though it probably represents an estimate based upon a compromise between the original cost of production, undepreciated, and the reproduction cost, including intangible elements such as engineering, injuries during construction, interest during construction, going concern

value, etc. The Commission found that the historical cost of the property, including additions, to May 21, 1920, was \$14,528,879.86. An analysis of testimony of appellant's officers, employees and engineering experts, throws serious doubt upon the reliability of any of the figures, whether those stated in the Commission's order or produced in the pleadings and affidavits in this case. In reality, the only figures as to the value of the properties entitled to any weight whatsoever are the figures as to historical cost, for, though the record is weighted down with allegations, affidavits, tables, estimates, and even findings, respecting reproduction costs, yet all the figures are based upon a condition very different from that existing at the time of the institution of this suit. In estimating the reproduction cost, in his exhibit introduced before the Commission, the company's engineer, Musson, applied to the inventory items, October 31, 1919, prices (Tr. 141). Prices at that time were at their highest level. Musson himself illuminates the vast change in cost between October, 1919, and December, 1921, when he states in his affidavit of December 9, 1921, that the then present replacement value was "About 30% greater than was the original cost of said property." A calculation shows (Dec. 9, 1921) undepreciated re-

placement cost of Oct. 31, 1919, properties to have been, according to Musson's estimate, about \$18,365,000, which is to be contrasted with his October 31, 1919, reproduction cost valuation of the same property of \$29,812,750.75 (Tr. 201). This court, in *Galveston Electric Company v. Galveston*, — U. S. —, 66 L. ed. 382, 389, judicially recognized the continued price recession as well as the continued recession of current rates of return, which is demonstrated by a comparison of Musson's figures of October, 1919, and December, 1921.

Since, then, the only figures in the record having any staid value are those pertaining to historical or original cost, and since the only possible reliable reproduction cost figures are those obtained by the application of estimated percentages to historic or original cost, the entire discussion must involve an elimination of all reproduction figures in the record and can involve only a consideration (whether for historic or replacement cost purposes) of original figures. The remainder of the discussion therefore will be based upon such figures.

There is then, to start with, the historic cost of \$14,528,879.86, which includes additions to May 21, 1920, also includes production properties but which

does not include claimed additions for going concern value and working capital. Immediately the question arises as to whether this figure is correct.

In 1917, appellant increased its capital stock from \$4,000,000 to \$10,000,000, and at the same time issued \$1,356,000 of the increase for cash, \$2,000,000 for properties theretofore owned by the Osage and Oklahoma Company, \$2,000,000 for Caney River Gas Company properties, \$100,000 for the Enid Natural Gas Company properties, \$250,000 for the Peoples Fuel and Supply Company properties, and \$300,000 for the Oklahoma Fuel and Supply Company properties, (Tr. p. 244). An appraisalment was made of the properties of the principal merged companies, namely, Oklahoma Natural, Osage & Oklahoma, and Caney River, and detailed information and vouchers to support entries in books were made. Under the laws of Oklahoma stock cannot be issued for less than par in money or property. This issue must have been justified and the cost vouchers must of necessity have been based upon estimated values of these companies' properties in totals equaling the stock issued therefor. There could be no complaint of this if in fact the properties had been equal to the par of the stock issued for them

respectively. But these vouchers must have supplied the "out of pocket" expenditure data, as to that portion of those properties still carried as assets, which was embraced in Mr. Gayle's inventory on cost basis. See testimony of Ritts, Sec'y-Treas. (Tr. 245, 246). Yet one of these properties which was embraced in Mr. Gayle's inventory of cost basis. See testimony of Ritts, Secretary-Treasurer, Trans. 245, 246. Yet, one of these properties which was taken in 1917 for, and which must have been vouchered at, \$2,000,000, was declared in a 1917 rate case before the Commission as having been of the original cost of \$522,000, and having a then replacement cost of \$840,000, estimated to have depreciated at 10% a year for five years, and claimed by counsel for that company (on the brief in the case at bar) to have had a then present physical value of \$398,530, which the order says is, of course, only an estimate. But, since it was the basis for a rate and was the claim of the company itself, it may be deemed to have been as great as the property would bear. Thus, a property is included on the original cost basis as having cost \$2,000,000, whereas in fact its value at the actual time could not have exceeded \$400,000. Compare Trans. 244, 5, 6, and 7. This was an ordinary case of interlocking directorates,

Trans. p. 228, 29, and 248. Yet, the prices mutually agreed on must have been included in vouchers considered to obtain "out of pocket" cost. It so happens that data to show actual value of the Caney River property taken in for \$2,000,000 is not available, but it was taken in at the same time as the other property. This frequent method is shown to have been familiar to the company, and it is not unreasonable to conclude that the same ratio of actual value to what is called "out of pocket" cost was held in respect of the other company.

Definite information is furnished as to the original incorporation of the Oklahoma Natural, with \$4,000,000 par (the testimony again being that of a vice-president, Bartlett, in a hearing in 1917), the entire four million was issued all for property (Tr. 220). True, in the record there is an affidavit of the present vice-president, Mr. Sharp, who was not at the time of the organization connected with the company, wherein he states on information and belief that two million of the four million of the capital of the company was paid in cash; but knowing that the issue was in the case, if such had been the fact, authentic records could have been produced to overcome the positive testimony of the former vice-

president, who was an officer at the time of the organization, that all of the first four million of capital was issued in consideration of the property (Tr. 322). Moreover, this property for which \$4,000,000 of stock was issued, consisted of 10,000 acres of leases, largely in what was known as the Hog Shooter District, producing 500,000,000 cubic feet open flow from possibly thirty or forty gas wells in a virgin field, with no pipe line. Trans. 220. As further showing the capital stock history of this company and as reflecting upon the contention that no dividends had been paid, it appears that when, in June, 1919 (Tr. 245), the stock was increased to \$15,000,000, \$1,300,000 of the increase was issued either as a stock dividend or as a bonus to stockholders who purchased then \$3,000,000 par for cash (Tr. 248). With due appreciation that the amount of outstanding stock or bonds is not of great weight in reflecting the value as a rate basis, yet the corporate history of appellant is pertinent as showing that the costs data in the case before the Commission is unreliable and as further developing the idea that the method of supporting the reproduction cost figures by applying a percentage increase to original cost figures thus unreliably obtained (Tr. 144, 215), is

itself unreliable. In frankness, it should be said that it is impossible from the records in this case to show the exact extent of either the inaccuracy or the unreliability of the figures of value found in the record.

As further reflecting upon its correctness or accuracy is the testimony of Mr. Gayle, Musson's partner, who seems to have prepared the original cost exhibits for appellant (Tr. 240). (In considering Mr. Gayle's figures it will be noted that the Commission adopted the figures of Durham, who appears to have been employed by the Commission and who worked with Gayle in making the inventories and inspecting the vouchers.) Portions of Durham's testimony is found, Tr. 210, *et seq.* Gayle testified that \$16,190,382.40 represents the actual "out of pocket" cost of the property of this company, as of October, 1919 (including investments in gasoline and oil divisions aggregating about \$470,000), and that sum includes the entire expenditure "for drilling wells" without separating or differentiating the "dry from the producing wells." Moreover (Tr. 240), it is shown that Dalious, appellant's witness, testified before the Commission "We charge the drilling to expense af-

ter the job is complete." It also appears that Dalious prepared an exhibit, introduced before the Commission, purporting to be "Statement of drilling and purchase wells charged to production expense during 1920, as shown under caption "Production Expense Schedule No. 1, Exhibit No. 20." This exhibit is found, pp. 253, 4, 5, of Transcript. From it it appears that \$525,654 was included in the operating expense of that year for "drilling wells," and that this item was included in the total of \$1,247,433.05 of production and operating expense which, added to other operating expenses, was deducted from the gross operating income in order to ascertain the net operating income which appellant claims to evidence the inadequacy of its returns.

Now, manifestly, if the cost of drilling wells is included in the historic cost totals, it is improper to again include the same element and items in determining the amount which must be earned for operating expenses. Moreover, if the company has already earned, in the guise of an operating expense, the cost incurred in drilling the wells, then the amount thus obtained should be deducted from the total cost, out of pocket cost, of the property. Else a situation is presented wherein the same outlay is twice

charged, once to the capital account and again to the operating expense account. C. S. Thompson, an engineer, whose qualifications are stated (Tr. 260), sharply criticises this method of accounting. There are three affidavits dealing with this subject: Thompson's (Tr. 260), Sharp and Dalious' rebuttal affidavit (Tr. 376), and Thompson's reply affidavit (Tr. 378). Thompson based his affidavit upon the verified annual and quarterly reports filed by appellant with the Corporation Commission as required by law. From a consideration of these reports Thompson concludes that appellant has made a practice of carrying as a part of its "regular operating expense" charges to cover not only drilling wells but changes in construction, repairs to wells and leases, repairs to lines and buildings, surrendered leases and abandoned wells and lines. Sharp and Dalious' affidavits attempt to justify this practice but state that the only items that are so included as an operating expense are labor items. The amount shown for one year, 1920, on account of drilling wells was \$525,654.34 (Tr. 254), the enormous total of which, coupled with Gayle's positive testimony (Tr. 240) that his total reproduction cost figure represents the actual "out of pocket cost" of the property and that these include "The entire expen-

diture for drilling wells" rather tends to throw doubt on the accuracy of the limitation of the operating expense account of production properties to labor elements thereof. However this may be, the charging as an operating expense of any element for changes in construction, repairs on wells or leases, repairs to lines, repairs to buildings, drilling wells, surrendered leases and abandoned wells and lines, must be treated as *pro tanto*, annually amortizing abandoned wells, pipe lines no longer useful, and the expense of drilling wells, in which event same should be deducted from the capital account.

Thus all of the evidence which appellant, on the basis of such methods of bookkeeping, submits as to what its earnings have been, and all estimates, based thereon, as to what its earnings will be, become valueless. Appellees must admit that it is impossible from the affidavits submitted to tell just the extent of the result of these considerations, though the extent must be very considerable. For it appears from the bill of complaint that appellant was required, because of diminished production and exhaustion of oil fields and the necessity to extend its lines to new field, to replace the loss of old, to make new investment which in 1917 cost \$974,473.09; in

1918, \$1,632,004.72; in 1919, \$1,419,667.39, and in 1920, \$1,528,195.81, or a total for the four years of \$5,554,341.01. Appellant claims in reality that this is an expense in furnishing gas, yet in the historical cost inventories it seemingly goes into the "out of pocket" costs of the properties, whereas the properties abandoned because of the exhaustion of the fields, the labor expense in taking up pipes and relaying them and the cost of transporting to the location of new lines, the cost of leases and lines abandoned, etc., has already been charged off in the guise of an operating expense. So, appellant's allegation in the bill that for the years 1917, 1918, 1919, and 1920, "Complainant's net earnings by making no allowance on depreciation or amortization were \$4,348,848.45" is altogether unreliable, since the operating expense which was deducted from gross revenue in order to obtain the net earnings, really embraced charges which, properly considered, annually amortized the property respecting which the charges were made.

It appears from the preceding discussion that it is impossible from the record in this case to ascertain even approximately what the fair and proper expense of operating the property is. Without this

element being definitely shown, it is impossible to calculate a rate; because without it all deductions as to what the future will show, based upon the net experience of the past, becomes valueless.

Moreover, the consideration above advanced casts doubt upon the original cost figures derived from the records of appellant. In turn, since the only method of obtaining replacement cost figures is by applying percentages to historical cost figures in accordance with estimates of engineers, the same doubt exists respecting reproduction cost data.

#### **AMORTIZATION AND DEPRECIATION.**

Appellant claims that it should be permitted to collect not less than 5% per annum for depreciation and 10% per annum to amortize its property. Trans. 17. There is a remarkable consistency between the figures of the engineer employed by the Commission, Durham, Trans. 210, 213, and the Company's engineer, Musson, Trans. 141, as to the depreciated value of the property. For example, the company formerly owning the Tulsa distribution plant was organized March 16, 1905 (Tr. 323). The depreciation of this property was estimated by Durham to have been, in the course of its life 17.56%, which is very

near 18% depreciation which Musson applies to the entire properties (Tr. 34), and very near the 20% rate of average depreciation for the entire system which Durham estimated. The Oklahoma Natural itself was organized in 1906. Now, on the present method of charging as an operating expense those elements which properly should be charged to depreciation and amortization (Thompson's affidavit, Tr. 260,278, Sharp-Dalious affidavits, Tr. 376), the Company has actually amortized large portions of its property and has collected for depreciation. So, even on the original cost theory it is proper, since the company has had disguised as an operating expense a return for depreciation and demortization, to deduct the actual depreciation from the historical cost figures presented in order to get at the historical cost of the property as it now exists.

But, if 10% per annum for amortization and 5% per annum for depreciation are at all proper, then it is unreasonable to suppose that the amount of depreciation to be deducted in order to get at the present actual value, compared with the cost to produce or cost to reproduce, is only 18% for a company whose life, or the life of many of the principal of whose integral parts has extended from 1907 to the

present time. If the value is as claimed by the testimony of the company's experts, then it is impossible, in view of the average estimated depreciation, to justify the allowance of anything like the return claimed for amortization and depreciation—especially in view of the accounting system of appellant, which includes elements properly chargeable to depreciation and amortization as operating expense.

And, in point of fact, considering the financial history of this company as developed by the record, the allegation in the verified answer (Tr. 65), "that the earnings of the complainant in the past have been sufficient to completely amortize its original investment" and that "its figures as to values should be reduced by the amounts and amortization earned." must be taken as correct. Appellant, in view of this allegation, knew that this issue was in the case, and, though an exhaustive affidavit is introduced to rebut the answer (Tr. 310, 348), the allegation of the answer just quoted is met (Tr. 324, *et seq.*), merely by statements as to what *dividends* have been declared (entirely ignoring the essential question which was to what *earnings* had been made), and by the further statement, confirmative of the correctness of the defendant's answer, that all of the

earnings which were not paid out in dividends were "put back into the property," which can only mean "to produce other property." If the fact as to the earnings, which was the point at issue, had been other than as alleged in the answer, it is safe to assume that astute counsel, well knowing that the terms "earnings" and "dividends" are not convertible, would, to rebut the claim that the property had already been amortized from earnings, have adduced figures to show what the *earnings* had been and would have supplied the facts to show that the part of the earnings which had not been distributed as dividends, had not been employed to produce the present value of the property.

The situation is very similar to that which was considered in *Clarksburgh Light & Heat Co. v. Public Service Comm.*, Supreme Court of West Virginia, 100 S. E. 551 (1919), to which attention is earnestly invited. There the Company had been organized in 1904. Regulations by Commission commenced 1914; 100 S. E. 556. It has therefore made its own rates during the greater part of its existence. It made the same contentions as to amortization as made here. The only difference between the two cases is that there the earnings were distributed as dividends, while here they were used to create new property.

The principle, however, is the same. The court said:

“Such part of these receipts as may properly be construed to be for the purchase price of the gas should have been treated as in effect purchase money for its property, and its capital have been depreciated to that extent. In other words, in order to arrive at a just conclusion as to what is a proper allowance to be made for amortizing the investment we must consider that this process has been going on during the whole life of the plant. *It will not do to say that this company could by continued active operations for the first half of its life exhaust more than one-half of its gas supply, and declare the whole of it in dividends as profits on its investment, and then begin the amortization of the investment after its property had been thus depleted.* If we assume that the petitioner's investment amounted to \$1,500,000, or even \$2,000,000, as contended by it, in order make which amount, however, the original investment has to be more than doubled, because of appreciation in the value of its properties, we must then assume that during all the time it has been operating, and withdrawing gas from its field, and selling the same to its customers, it has been not only earning money, but it has been selling a part of its property, and we must depreciate its investment each year of its existence to the extent of such sale.”

(In considering this case the court will note the difference between the public utility statute in Oklahoma and that in West Virginia, where all “gas companies” are public utilities.)

To be considered in connection with the foregoing, is the principle laid down in the case of *Knoxville v. Knoxville Water Company*, 212 U. S. 1, 13, 14, that it is the duty of the utility "to exact sufficient returns to keep the investment unimpaired" and failure to do so is its own fault. Now, from 1906, until April, 1918, the rates under which the appellant operated were of its own fixing (Tr. 57). At that time an increase in rates was prayed and granted and no dissatisfaction was indicated therewith by appeal or motion for rehearing, nor was any appeal made or rehearing moved from the September 1, 1919, or April 1, 1920, orders. Under the principle of the Knoxville case, the conduct of appellant estops it, whatever the facts may have been, from complaining as to pre-existing depreciation or amortization.

But, the company created its original capital of four million dollars par, with leases in a field not connected with a market by pipe line. Some of the constituent properties were taken over subject to indebtedness (Tr. 323). This indebtedness must have been paid somehow or other. After the increase from \$4,000,000 to \$10,000,000, properties were taken in on a valuation estimated to equal the par of stock

issued therefor, and \$1,356,000 of stock was paid for in cash at par. When the stock was thereafter increased to \$15,000,000, \$3,000,000 was issued for cash and \$1,350,000 was issued as a stock dividend or bonus (Tr. 324). Besides this, the company appears to have borrowed some money. Hence, in addition to the borrowed money, there was actually invested in cash \$4,356,000, and the property whose real value at time of acquirement is not definitely disclosed. If the debt assumed and paid equalled the debts now existing, this situation exists. There is outstanding at this time \$14,300,00 par value stock (Tr. 324), of which \$4,356,000 was paid in cash and \$1,300,000 was given as bonus or as a stock dividend (Tr. 324). In round numbers, then, \$10,000,000 was issued for property. It is disclosed that the Osage and Oklahoma Company, having a then value, as claimed by its counsel who is on the brief in this case, of approximately \$400,000 (Tr. 247) was put in at \$2,000,000, or at the proportion of one of actual to five of par value of stock issued therefor. If, as respects all of the stock issued for property the same percentage of actual value to par value of stock issued therefor prevailed, then the total actual value of the property put in was one-fifth of \$10,-

000,000, or \$2,000,000. This, together with the \$4,356,000 in cash put into the property makes a total of \$6,356,000 of actual value from which was produced property now claimed to have a value of \$20,000,000, and claimed to have cost, "out of pocket," to exceed \$14,000,000, after eliminating all abandoned and exhausted property, such being accomplished by the simple process of putting back into the property "all of the earnings of the company" in excess of dividends paid (Tr. 324-5).

The force of the argument of appellant that past successes would not justify a rate below one which is now reasonable and just (brief, p. 229), is fully appreciated. But in determining what is reasonable and just, under the inescapable logic of the West Virginia case, *supra*, when the value of the property for a rate base is determined, it must assuredly be considered that the capital or actual investment account should be depreciated to the extent to which the receipts from sales should be treated as in effect a return of the purchase money of the property. Of course, this observation is made with respect to the historical cost. But the same result is obtained if the reproduction cost theory is considered or adopted to ascertain the rate base. Suppose, for exam-

ple, appellant should develop a field and extend its gathering lines thereto and take gas almost but not quite to the point of exhaustion. The investment on original cost basis would, under ordinary methods of calculation, be included at original cost, regardless of the fact that its value is almost destroyed by depletion. Also, in calculating the reproduction cost of the identical properties, reproduction cost value would be figured upon the expense to reproduce the physical elements; and in each event the fact that the property had been all but exhausted would not figure in its evaluation. Properly speaking, however, the company would simply have gradually sold that property during the period in which it was taking the gas out from it, and in reality for the purpose of valuation for sale or rate making or any other purpose, it would not be worth nor bring nor be valued at either the historic or replacement cost of the physical elements. Its true value would be determined by estimating what could yet be gotten out of it.

In ascertaining value for rate making only prudent investment may be considered. A property like the Morrison property (Tr. 321-2), once highly productive, now nearing exhaustion, but yet not

abandoned, would never, in prudence, be reconstructed. It can not possibly have a value equal to or even approximating what it cost or what it would cost to reproduce it. It is simply not useful to that extent. Moreover, no one could, with prudence, reproduce it. Hence, on any theory, its value as a serviceable unite of the system must be depreciated to the point of its serviceable value. But, nowhere in the record can be found even an estimate of its present serviceable value. As a unit, it is included in the figures at what it cost. In view of the claims as to hazard and exhaustion, it is assumed that numerous other similar units are included in these figures at cost. As, for example, the Duncan line properties (Tr. 334, 354). But cost, whether original or replacement, under this peculiar situation, does not reflect present value of such properties. Nor is there any evidence as to value except such as estimated on cost. So, there is no data for which the sufficiency of the rate may be determined at all, much less data clearly demonstrating that the rate is confiscatory.

### FURTHER CONSIDERATIONS RESPECTING EXPENSE.

Calculations as to what income may be expected from the rates prescribed are based, among other things, upon showings as to past operating expenses. Those of 1919 and 1920 shown before the Commission are principally relied on. Due to marked changes between that time and December, 1921, such a base becomes unreliable. As this court in the Galveston case, *supra*, knew judicially of the retrocession of costs of property and of rates of return, so it knows the marked reduction in all elements going into expense accounts (Tr. 62). True, Dalious calculates "out of pocket" losses for the abnormal (Tr. 60) and short period the rate had been in effect (Tr. 208); but all his figures embrace periods of high prices, and the figures before the Commission were brought down only to May, 1920 (Tr. 87). Of course, such a utility as appellant, whose principal income is dependent on temperatures, is not expected to show net earnings each month, (Tr. 60, 61). The question is one of year-round experience. But the rate had been tested only a few months, and those abnormally warm even for Oklahoma (Tr. 60). Another element either improperly included as an expense, or else to be taken into con-

sideration in determining whether or not the return is adequate, is that of Federal Income Taxes, amounting in the year 1920 to \$121,000 (Tr. 267), *Galveston Electric Company v. Galveston*, — U. S. —, 66 L. ed. 382, 388). This is shown by the annual report for the year ended December 31, 1920, to the Corporation Commission and indicates, as declared by the auditor of the Commission in his affidavit reciting the facts, "The enjoyment of a very large measure of prosperity during this period." The item must have been ordinary corporation income tax, because the public utility tax of 8% of the amount paid for transportation through pipe lines covers only oil and not gas. Section 500 of the Revenue Act of 1918. Incidentally, the report of such an amount as federal income taxes for the year in question gives rise to an interesting query as to what was the real net earnings of this company were for that year as reflected from a proper classification of its accounts.

#### **THE HAZARDS OF THE BUSINESS.**

Much stress is laid in the bill of complaint in the court below and in the brief here on the speculative character of the business of appellant. Further, much is said respecting the compulsion it has been

under to extend its gathering lines to new territory and gas fields in order to procure an adequate supply of gas for service to its patrons. The answer admits the speculative character of the business, but alleges the voluntary entrance upon it by the appellant. The question arises, "Whose is the hazard of engaging upon the business of a speculative enterprise?" and this question has been answered by *Darnell v. Edwards*, 22 U. S. 564, 69, 70, and *San Diego Land & Town Company v. Jasper*, 189 U. S. 493, wherein at page 447 it is said:

"If the original company embarked upon a great speculation which has not turned out as expected, more modest valuations are a result to which it must make up its mind."

Under the principles of these two cases, when connected with the universally adopted principles that it is the property used and useful in the service of the public which alone is to be valued and that the value of that property is determined by its usefulness in serving the public, it is fair to presume from the allegations as to the hazard involved in this business, as to depletion of supply in the several gas fields, etc., that this property has nothing like the extravagant values claimed for it. If its conditions is as dire as represented, the prop-

erty cannot be as valuable as represented. The conditions cannot be so desperate and the values claimed be so extravagant. This conclusion is inescapable, and moreover the affidavits supporting the company's contentions not only do not overcome the doubt which these deductions throw upon the entire case, but as well disprove themselves.

As to the complaint respecting the *requirement* which the company has been under to extend its lines to new fields, it is observable that no authority existed in the Corporation Commission, and that it disavows the power (Tr. 63) to compel the utility to serve from a district as respects which it has not offered itself as a public servant. This was, in effect, the contention of appellant itself in an action instituted by the Chickasha Gas & Electric Company which had a franchise to distribute gas in the city of Chickasha and sought to have the Corporation Commission compel the appellant make a connection with, and serve gas from, its line which was laid within four miles of the town. This effort to compel it to enter upon a public service which it had not held itself out to render was resisted by the appellant and in an opinion filed December 19, 1922, not yet officially reported, found Vol. XX, Okla. App.

Ct. Rep., page 148, the Supreme Court of Oklahoma upheld the contention of appellant, holding that:

“The Corporation Commission is without power or authority to compel a public utility to furnish natural gas to a city, town or community which it has not undertaken or professed to serve, and which it is under no obligation to serve, since to require the utility to serve such city, town or community would be tantamount to the taking of private property for public use without just compensation.”

The principle applied by the Oklahoma Supreme Court in this case is equally applicable to the situation in which a utility holds itself out to serve a community with gas developed from a particular field or district of the state. When the supply of gas is exhausted no power exists to compel the utility to go to an entirely different part of the state, in which it has no wells and no pipe line, and obtain gas to transport to the community. And, as this appellant was quick and efficient in resenting an effort to compel it to serve a community which it had not undertaken to serve, it would and could successfully resist an effort to compel it to lay its distributing lines to a field many miles distant from the field from which it initially undertook to serve. If therefore, it went to a new field far distant from, and not transversed by, its gathering or pipe lines

(as was done in the case of the Cement-Duncan line), this was a voluntary act on its part; and, if it happens, as claimed to have happened, that the depletion of the supply from such field has failed to warrant the outlay incurred in connecting with it, then, the chance taken in the exercise of business discretion and voluntarily, was at the company's hazard. And, in any event it would be improper to include such property in a rate base at either original cost or cost to replace. Thus, the affidavits introduced by the appellant itself as to the exhaustion of fields, the depletion of supply, the large investments annually made for extensions, etc., and respecting property from which no adequate return is now being procured, react to disprove its own contentions.

#### **AS RESPECTS LEAKAGE.**

Much of the difficulty in the case results from leakage or waste of gas. Appellees admit several propositions advanced by appellant respecting leakage; as, for example, that there is no such thing as a bottle-tight gas system; that percentages of leakage to sales are misleading, in that pressure and quantity of sales inevitably vary the percentages; and that electrolysis which will pit the pipes, in-

crease leakage possibilities. The element of electrolysis, however, can exist in but two cities, Tulsa and Sapulpa. The extent of the leakage on this account is not shown (Tr. 203, 252, 341).

In the affidavit of Duval, the Commission's expert, on whose evidence in another respect (Tr. 354) appellant relies, regarding leakage (Tr. 265), he says: "With an estimated loss of 5,007,696.00 cu. ft. for the year 1920, the loss per year per mile of three-inch equivalent main would be 5,000,000 cu. ft., which is an enormous loss for any kind of a transmission system," adding that "a reasonable loss for transmission system would be 500,000 cu. ft. per year per mile for three-inch equivalent main, which loss is only one-tenth the loss estimated by the Oklahoma Natural Gas Company for the year 1920." Dr. Samuel S. Wyer, appellant's expert (Tr. 249 *et seq.*) testified in the hearing before the Commission that the loss in the city of Tulsa including a short stretch of main line, was "43 times larger than good manufactured gas practice would indicate," and "twenty-two times larger than the average of over a hundred towns in Ohio supplied by the Ohio Fuel Supply Co." (Tr. 250). He said "this loss must be curtailed" and that "on a basis

that it will cost the public to replace the gas now wasted in the Tulsa plant (which is but a very small unit of appellant's entire system) the annual loss amounts to \$2,500,000 each year." Giving the history of the Ohio Fuel Supply Company as an example, this witness affirmatively answered the question "Can the most of this waste in the distribution plant be eliminated by the proper construction and maintenance of that distributing plant?" The witness recommended that the Commission "ought to immediately act, not only so far as the local Tulsa situation is concerned, but so far as every other town supplied by the Oklahoma Natural is concerned, and in fact every town in the State."

It will be remembered from a reading of the Commission's order that under the voluntary contract between the appellant and the local distributing companies, appellant was required to bear the burden of the leakage not only in its own lines but in the lines of the local plants. Appellant complained to the Commission that the local distributing companies are "old, inadequate and leaky, and the leakage therein is undue, excessive and enormous and causes a great and unnecessary loss to the petitioner," alleging that the divisional contracts

should be abrogated in order to furnish an incentive to the local plants to curtail leakage. This indicates that appellant recognized at that time, and for the purpose of procuring an abrogation of the divisional contract it had voluntarily made, that it was eminently practical to reduce the leakage (Tr. 74). The claim as respects the local distributing plants is equally true respecting appellant's own system, since it appears from the affidavit of Vice-President Sharp, of the appellant, that the leakage of appellant's distributing system "is not in excess of the usual and ordinary amount of leakage prevailing generally in all natural gas distributing systems in the State of Oklahoma," from which it is safe to assume an admission that it is as great. A deplorable condition thus appears to exist with respect to leakage. It actually appears (Tr. 237) that whereas the total amount of gas sold during 1920 was 20,030,786 M. cu. ft., appellant purchased 20,786,472 M. cu. ft., whereas the cost of producing the gas which appellant itself produced from its own wells was for the same period \$1,247,433.05 as against \$1,560,679.91 paid for gas purchased (Tr. 238). Of this situation, Grimes states (Tr. 238): "In other words, approximately one-half of the expense incurred in procuring gas which the Okla-

homa Natural Gas Company sold was incurred in the production of gas produced by the Company, the remaining one-half being the cost of gas purchased during that year, whereas the volume of gas purchased exceeded the volume of gas sold during that period." A part of this difference was explained by the fact that gas used in operating the compressor stations, about 3,000,000 cu. ft. per day, was not measured and was consequently not included in the line loss or leakage. But this cannot explain away the obviously remarkable situation admitted to exist; and if deducted from leakage would have to be added to expense—with the same net result.

Dr. Wyer said that "eternal vigilance" is the price of a tight gas system and that funds were required to keep the system tight. But it is to be remembered that up to the time of the making of the order here attacked (though it is clear from its complaint voiced in attempting to secure the abrogation of the divisional contract, that appellant recognized the enormous loss from leakage) appellant has never appealed from, nor moved the reconsideration, of a rate fixed by the Commission, and not from the time of its organization in 1906

to 1918 did appellant ever ask the Commission for advanced rates to enable it to prevent or reduce leakage or for any other purpose. The principle of the Knoxville Water Company case, 212 U. S. 1, therefore applies to estop the appellant from complaining that it has not sufficient funds with which, in the exercise of this eternal vigilance, to keep the system tight. The company was under the duty to have collected rates sufficient to keep its plant in good condition, and if it did not do so the consequence must be borne by it and not the public. And, from a consideration of the financial history of the company it would appear that it had actually collected such rates.

Moreover, the people who pay the rates did not construct this system and did not permit it to become leaky. The system was either defectively constructed or else has been permitted to become leaky. The people are responsible in neither event. One of two conclusions is inescapable. Either the value of the plant must be diminished because it is in such state that grossly excessive leakage occurs in it, or else, if the property is valued, for a rate base, as a properly constructed plant (and the theory of a reproduction cost valuation means just

this)—the burden of leakage must be borne by the company. The Corporation Commission in its order but followed Dr. Wyer's advice, by taking practical steps to enforce the reduction of leakage. And such steps were identical in nature with those appellant asked in the application for the abrogation of the divisional contracts, viz.: placing the burden thereof upon the owners, so as to induce them to curtail the loss. It is further to be pointed out that though the issue of leakage was raised in the answer, and though appellant insists that no provision is made for the added income to bring the plants to such a state of tightness as to reduce the leakage to the permitted amount, no evidence as to what the required amount would be is furnished.

The Commission's order was based on the idea that the public and the company should bear the burden of leakage, half and half. It is submitted it was more than generous under all the circumstances to permit the company to shoulder off on consumers, who are not responsible for the condition, the burden of leakage in excess of 10%.

The argument on behalf of the appellant that a 10% allowance could not be justified for high pressure lines, in which it was claimed that it was impossible because of pressure to reduce the leakage, is discounted by a consideration of the fact

that of course these mains are designed and laid, or at least are supposed to be designed and laid, with a view to the use to which they are put, and, by reference to the testimony of Dr. Wyer, respecting the large Ohio system (Tr. 250) as to the reduction made from the mouth of the well to the burner tip, that system must have had in it numerous high pressure mains.

Without prolonging the discussion, it is submitted that it is unfair to expect the public to bear all the burden resulting from the leaky state of appellant's property, consequent upon either its improper construction or permitting it to fall into a state of disrepair, and that no showing has been made on its behalf which would justify its effort to shift this entire burden to the public. If this position of appellees be correct, it follows that the attempt of appellant to demonstrate that the rates are confiscatory fails, in large measure, by reason of the leakage situation alone.

This cause is respectfully submitted.

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No. 406.

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**In the Supreme Court of the  
United States**

**October Term, 1922**

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OKLAHOMA NATURAL GAS COMPANY,  
*Appellant,*

VS.

CAMPBELL RUSSELL ET AL., *Appellees.*

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**APPELLANT'S BRIEF AND PRINTED ARGUMENT  
IN REPLY.**

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**Reply to appellees' contention as to the  
effect of Section 23 of Article 9 of the Okla-  
homa Constitution.**

In appellees' brief it is said that appellant, in presenting the distinctions between this case and the Prentis case, "fails to observe that in the event the Supreme Court of Oklahoma shall reverse the cause, it becomes its duty under the Constitution to make a substitute order which relates back to the date of

the original order, and under which any deficiency in the original order may, and must, be remedied." Appellees, however, omit to point out the means by which the deficiency in the original order can be remedied, unless they contend that remitting appellant to the pursuit of its more than 30,000 different patrons in an undertaking to collect the past deficiency from them, constitutes a plain, adequate and complete remedy. Neither do appellees suggest any means by which the deficiency in the original order, and the loss thereby caused up to the date of the Supreme Court's decision on the appeal, may be remedied in the event the Supreme Court shall affirm the order.

Appellees also state that this provision of the Constitution renders appellant's argument one purely *ab inconveniente*; that the real question is, who shall sustain the burden of inconvenience during the pendency of the appeal? Shall appellant be permitted to collect rates in excess of those prescribed by the order under a bond to return the excess with interest if the rates prescribed are found just, or shall the patrons keep the excess pending the appeal without any security for its payment to appellant if the rates are found confiscatory? Further

on appellees say that "the constitutional provisions of Oklahoma, by the retroactive operation of a substituted order if found to be required, render practical and even mandatory the reimbursement of any intermediate loss sustained, so that no necessity exists on any theory for Federal judicial intervention at the present state." But here again they do not pretend to state how the reimbursement is to be made.

The provision of the Constitution of Oklahoma to which appellees refer is found in Section 23 of Article 9. Appellant did not fail, as suggested, to refer to that provision and to appellees' contention respecting it. On the contrary, it devoted that portion of its original brief beginning on page 80 and ending on page 93 to a discussion thereof. It desires to add thereto the following argument and authorities:

To test the adequacy of Section 23, Article 9, Oklahoma Constitution, as defendants interpret it, for the protection of appellant against the deprivation of its property without due process of law, it is necessary to consider what may be done under it, what may be "its practical operation and effect." The following is submitted as an accurate statement

of the practical operation and effect of the Oklahoma Constitution relating to the making and enforcing of rate orders, including Section 23 of Article 9 construed as defendants construe it:

1. The Corporation Commission prescribes the rates in the first instance. In so doing it acts legislatively and not judicially (*Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210).

2. From the Commission's rate order an appeal is allowed to the State Supreme Court. In passing upon the appeal that Court also acts legislatively and not judicially (*Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210; *Atchison, T. & S. F. Ry. Co. v. State*, 23 Okla. 510; *Chicago, R. I. & P. Ry. Co. v. State*, 24 Okla. 370; *Atchison, T. & S. F. Ry. Co. v. Miller*, 28 Okla. 109).

3. Notwithstanding the legislative appeal, the Commission's rate order becomes immediately effective and enforceable, unless the Supreme Court will suspend it until the determination of the appeal.

4. If the Supreme Court refuses to suspend the order, as here, and if the rates prescribed are in fact confiscatory, then during the pendency of the appeal, however long that may be, the company's

property is being taken without just compensation paid or secured.

5. When the Supreme Court finally acts upon the appeal, it may affirm or reverse the order. Neither appellant nor this court can control its action in that respect.

6. Only if the Supreme Court reverses the order and substitutes proper rates does Section 23, Article 9, Oklahoma Constitution, come into play at all. If the court affirms the order, Section 23 of Article 9 has no effect.

7. If the court affirms the order, its action being legislative and not judicial in character, that constitutes no adjudication that the rates are not confiscatory (*Prentis v. Atlantic Coast Line Company*, 211 U. S. 210; *Atchison, T. & S. F. Ry. Co. v. State*, 23 Okla. 510; *Chicago, R. I. & P. Ry. Co. v. State*, 24 Okla. 370; *Atchison, T. & S. F. Ry. Co. v. Miller*, 28 Okla. 109).

8. If the Supreme Court affirms the order, and appellant should file its bill and procure an injunction in the Federal Court only after that happens, the injunction then obtained will be only prospective in its operation, and will not restore to appellant the

reasonable compensation it was entitled to for its gas and services, the property of which it was deprived, during the two years of the pendency of the appeal (*In the matter of Lincoln Gas & Electric Light Co.*, 257 U. S. 6).

Whether the State Supreme Court will affirm or reverse the order, no one knows. If it affirms the order, then appellant's property will have been irremediably taken, in violation of the Constitution of the United States, during a period of at least two years. If it reverses the order, then appellant is given for its property taken unsecured claims against 30,000 individual consumers, many of whom are insolvent, and many others of whom will have left the country, and each of whom is liable only for his own indebtedness; and the cost of collecting the claims would be prohibitive (*Southwestern Tel. & Tel. Co. v. Danaher*, 238 U. S. 482). Appellant's property is now being taken without just compensation paid or secured; and defendants' contention is that a State constitutional provision under which the State Supreme Court, in a legislative capacity, may not even so much as award appellant the right to sue individuals for the property taken, is an adequate, certain and complete remedy, preventing a

Federal Court of equity from having jurisdiction to prohibit that taking of the property.

The State has no right to take appellant's property now without just compensation paid, unless it will guarantee to pay the just compensation when its justness is judicially determined. If it may take the property without just compensation now, and later legislatively declare that the compensation paid was just, when in fact it was not so, and thus prevent appellant from ever procuring just compensation for the service rendered during that time, then it can deprive appellant of its property without due process of law.

To say that the Federal Court may not inquire and determine whether the order now being enforced is confiscatory, and may not grant appellant a temporary injunction, until the confiscatory order has been affirmed legislatively by the State Supreme Court, is to say that the Federal Court may not move its hand to prevent the taking of property without due process of law until the property has been taken and until it is beyond the power of the court to restore it; that it may not act until it becomes impotent to redress the wrong.

If it were a certainty that the State Supreme

Court upon the determination of the legislative appeal would declare the prescribed rates unreasonable and unjust, and would substitute an order increasing them retroactively, and if the State would insure that the amounts due appellant under such substituted order would be paid, appellees' contention as to the effect of Section 23, Article 9, of the Constitution might have merit. But appellant has no assurance that when the court passes on the legislative appeal it will hold the prescribed rates unjust and unreasonable and will substitute other and higher rates. The Court may affirm the order. That is entirely within the range of possibility. This court recognized that fact in the Prentis case. Should it affirm the rates, the same would not be an adjudication as to their reasonableness or confiscatory character, would be a mere legislative finding and declaration, would not be *res judicata*, and would not conclude appellant. And if the rates, though affirmed legislatively, are in fact confiscatory, then appellant would be, and during all the past period when said rates would have been in effect it would have been, deprived of its property without due process of law. Should it then procure an injunction against the rates thus affirmed, inasmuch as appellant would have had neither a supersedeas nor

a temporary injunction during the pendency of the appeal, and since it would not have collected reasonable rates during that time, and would not have the same in its hands, the injunction then obtained would not preserve to appellant the reasonable compensation to which it was entitled in the meantime, because it would not have collected any to preserve; and, since the injunction would operate only prospectively, the Federal Court could not restore to appellant the just compensation for the service rendered to which it had been entitled all the time (257 U. S. 6). The result would be that the State could thus, by dividing the process into two steps, first making and enforcing the tentative order by one legislative body, and then legislatively affirming it by another legislative body, deprive appellant of its property without due process of law for a period of years, and its act in so doing would be irremediable. It could make and enforce for an indeterminate period a tentative confiscatory order, and then legislatively declare it just, and thus leave appellant without a remedy as to the property of which it was deprived in the meantime, although the rates might be confiscatory in fact and might be so declared by this court.

Inasmuch as no State may deprive a person of his property without due process of law, it follows that no State may put a person in a situation, or require him to submit to a condition, that will enable it to deprive him of his property without due process. No State has the right for a period of time to take a person's property without due process, and say to him that at the end of that time he may have no assurance that the property thus taken will be restored to him. No State has the right to require a person to put himself in a situation where he may be compelled, without redress, to submit to the confiscation of his property.

In this case, the State of Oklahoma, in effect, says to appellant: "Get ready to let me deprive you of your property without due process of law. Put yourself at my mercy. Put into effect confiscatory rates for the service you render. At some future time I will declare whether in my legislative judgment those rates are reasonable and just. You can not control my declaration. Although the rates may be confiscatory in fact, I may, either wrongfully or through error, declare them to be reasonable and just. Having gotten ready to let me deprive you of your property without due process of law by

putting into effect the confiscatory rates without any security for compensation to you in the event they are confiscatory, then the next step will be that I may, either wrongfully or through error, declare them to be just and reasonable. That declaration will not be an adjudication, and will not constitute the question whether they are confiscatory *res judicata*. That finding and declaration will not be due process of law. You may then go into a Federal Court and procure an injunction against the enforcement of the rates and show that they are and were confiscatory, but as to the service rendered up to the time you actually procure the injunction, you will be remediless, the damage done you will be irreparable, and I will have deprived you of your property without due process of law during that period. By dividing the proceeding into two steps, I will have accomplished what the Constitution of the United States says I may not do; that is, by making you serve during the pendency of the appeal at a confiscatory rate, without any provision for securing or restoring to you the reasonable compensation you were entitled to during that time, and then upon the determination of the appeal by either arbitrarily, wrongfully or erroneously declaring the rates to

have been just all the time, even though they were not so in fact, you will have been irremediably deprived of your property during that entire period without due process of law, and your property will have been taken during that period for public use without just compensation." If a state may require a person to put himself in a situation or submit to a condition where it may deprive him of his property without due process of law, and leave him remediless, then the State may violate the Fourteenth Amendment.

Inasmuch, therefore, as appellant is not permitted to collect reasonable rates during the pendency of the appeal, and inasmuch as it is given no security for the payment of the just compensation due it for the service rendered from July 1, 1921, to the determination of the appeal, if the Court affirms this order, it follows that Section 23 of Article 9 of the Constitution, even though it has the effect for which appellees contend, affords appellant no adequate, certain and complete remedy against the deprivation of its property without due process of law.

Also, it must be remembered that this is not a case in which merely the title to property is in-

volved, which property remains and may be subject to proper disposition at the end of the litigation with damages for withholding it; nor is it litigation as to whether or not a contract may be performed, performance of which may be enforced, together with compensation for the delay, at the end of the litigation. As to a public utility's service, if it is deprived of just compensation for a year or two years, that property, that just compensation, is gone and is taken from it forever. Unless the just compensation is put where appellant can get it in the event it is adjudged to have been entitled to it, then the just compensation does not await the determination of the litigation, and all that appellant could get from an injunction in the Federal court would be future protection, and not the restoration of the property of which it had wrongfully been deprived during the interim.

Nor will the presumption that the State Supreme Court will act rightly in determining the legislative appeal affect the situation. It may not. Appellant is not required to take that chance. It is not required to take the chance of confiscation. Since it is faced with the irremediable deprivation of its property without due process if the decision be

against it, it is "not bound to take the risk of the decision." *Union Pac. R. R. Co. v. Public Service Commission*, 248 U. S. 67, 70.

Tax cases present an analogous question. In cases where it is alleged that a tax levy by a State is violative of the Federal Constitution, this court holds that if the State laws provide for the payment of the tax under protest, for its segregation, for a suit by the taxpayer to recover it back, and for repayment in the event of a recovery, or if payment of the tax is to be enforced only by suit which the taxpayer may defend, then an injunction against the levy, assessment or collection of the tax will not lie, for the reason that an adequate, certain and complete remedy is given, and there is therefore no irreparable injury. *Arkansas Building & Loan Association v. Madden*, 175 U. S. 269; *Boise Artesian Hot & Cold Water Co. v. Boise City*, 213 U. S. 276; *Atchison, T. & S. F. Ry. Co. v. O'Connor*, 223 U. S. 280; *Gaar, Scott & Co. v. Shannon*, 223 U. S. 464. But this court also holds that if the State law makes no provision for segregating the unconstitutional tax thus paid, but puts it into the treasury of the State which can not be sued, does not provide for suit to recover it and for repayment in the event of a re-

covery, so that if the tax be paid and is unconstitutional, the damage is irreparable, then an injunction against the levy, assessment and collection of the tax will lie.

Why does this court sanction the injunction in the latter case and not in the former? Because in the former a certain and complete remedy is given the taxpayer, both for testing the validity of the tax and for its repayment if it is held invalid, so that he is not irreparably injured by being required to pay it; whereas in the latter case no such remedy is given, the tax is covered into the treasury of the State, the State can not be sued, and it therefore is undertaking to require the taxpayer to submit to a condition under which his constitutional rights can not be protected except by an injunction.

Exactly the same situation exists here. There has been no judicial determination of the constitutionality of the prescribed rates. They are enforced in advance of a judicial determination. While that cannot be done by mandamus (*Chicago, M. & St. P. Ry. Co. v. Minnesota*, 134 U. S. 418; *Missouri v. C., B. & Q. R. Co.*, 241 U. S. 533), it is being done through the threat of enormous fines. No fund is impounded to be paid to appellant if it is determined

that appellant is entitled to it. If the State Supreme Court affirms the order, then the damage done to appellant will be irreparable. Even if the State Supreme Court reverses the order, still the constitutional provision does not afford appellant an adequate, certain and complete remedy. It remits appellant to 30,000 different patrons, many of whom are insolvent, thousands of whom will have left the country, requiring a multitude of suits, and the expenditure of as much in collecting the retroactive charges as could be realized from them (*Southwestern Tel. & Tel. Co. v. Danaher*, 238 U. S. 482).

If the State Supreme Court had granted appellant a supersedeas, and permitted it to collect reasonable and just rates upon its giving a bond, the fund thus collected, so to speak, would have been impounded. Then, should appellant be adjudged entitled to it, it would have it. If it should be adjudged not entitled to it, then it and the sureties on its bond would return it with interest to those who had paid it. Equity will interfere to give relief where one's rights under the Constitution of the United States are being violated, and where, except in equity, he has not a plain, adequate, certain and complete remedy; and the remedy afforded by Section 23 of Ar-

ticle 9 of the State Constitution is not plain, adequate, certain and complete.

Appellees state that in the Prentis case this court evinced its intention to hold that the similar provision in the Virginia Constitution for substituting retroactive orders made by the Supreme Court on appeal from the Commission was an adequate protection for the railway companies; that this court intended to hold that even though the railways had duly taken their appeals to the Supreme Court of the State, and though they had applied to that court for a supersedeas, and though the supersedeas had been denied and the confiscatory rates had thereby become effective and enforceable, so that, unless they obtained an injunction the railways would have been required to put and maintain them in effect until the determination of the appeal, however long that might be, nevertheless, because the State Constitution provided for substituted retroactive orders in the event the Supreme Court reversed the Commission, the railways would not have been entitled to an injunction.

Appellant contends that this court made no such ruling; that inasmuch as the railways had taken no appeal to the State Supreme Court and had not

applied for a supersedeas, the question as to what their rights would have been if they had pursued that remedy and if the supersedeas had been denied, was not before the court for determination and was not determined. The real question before this court was whether, when a State Constitution provided a reasonable and valid scheme of rate-making, giving a legislative appeal from the Commission's orders to the Supreme Court with power in the latter to suspend the orders pending the appeal, it was consistent with "equitable fitness or propriety" for the federal court, before the rate order had ever been published, before it had become effective, and before any appeal had been taken to the Supreme Court and when none was contemplated, and when no supersedeas had been applied for or refused, to enjoin the enforcement of the rates, thus saying to the railways that they need not pursue the remedies provided by the State even to the point of making "certain that the officials of the State would try to enforce" the confiscatory rates, and thus in effect annulling and destroying the State's reasonable and valid plan of rate-making. And the gist of this court's opinion was that in such cases the principles of comity required that the railways take their appeals to the Supreme Court of Appeals; that before

resorting to the federal court it was their duty to use "every effort and all the machinery available" under the State constitutional provisions to prevent the confiscatory rates from becoming effective, "so as to make it absolutely certain that the officials of the State would try to establish and enforce an unconstitutional rule"; but that, when they had "used due diligence to prevent" the confiscatory rates from becoming effective, if they were unsuccessful and it became "absolutely certain that the officials of the State would try to *enforce*" the confiscatory rates, then the railways were not bound to wait longer, "were not bound to wait for proceedings brought to *enforce the rate* and to punish them for departing from it," but could resort at once to the federal court for the protection of their constitutional guaranties (*Love v. Atchison, T. & S. F. Ry. Co.*, 185 Fed. 321, 220 U. S. 618).

Appellant therefore says that, while the question as to what would have been the rights of the railways if they had taken their appeals and vainly applied for supersedeases, was not before the court and was not directly decided, the only conclusion deducible from the court's statements and reasoning is that the court assumed that if the railways followed

the remedies provided by the State the confiscatory rates would not be put into effect until they were affirmed by the Supreme Court; but that the railways, using due diligence under the State law to prevent their taking effect, could resort to the federal court whenever they became effective and enforceable; and this was restated in *Bacon v. Rutland R. Co.*, 232 U. S. 134.

It seems to us that appellee's contention refutes itself. To our minds it is inconceivable that this court, had the railways taken their appeals and applied for and been denied a supersedeas, would have announced a rule whereby the railways would have been required to put and maintain in effect the confiscatory rates pending the determination of the appeal, with the result that, if the confiscatory orders were affirmed, the railways would be remediless as to the property taken without due process up to the date of the affirmance; and, if they were reversed, the railways for their remedy would be remitted to the pursuit of hundreds of thousands, perhaps millions, of passengers, scattered from Maine to California and from Canada to the Gulf, to collect from them the difference between the fares they actually paid under the Commission's order and

what they would have paid under the substituted order. Consider the labor and expense of even making and keeping a list of the passengers, together with their addresses, and statements of the service rendered them and the amount paid therefor. How many of such passengers would give incorrect names and addresses so that they could never be found? How many would subsequently have moved, with the result that they could not be found? How many would have died? How many were insolvent to start with? How many would have become insolvent in the meantime? Consider the railways trying to collect those indebtednesses. Consider the ratio between the expense of collection and the amounts that could be collected (*Southwestern Tel. & Tel. Co. v. Danaher*, 238 U. S. 482).

Certainly this court intended to announce no such rule. If it did, it is strange that that fact did not occur to so able a lawyer as Judge Hook, who granted a temporary injunction in the case of *Atchison, T. & S. F. Ry. Co. et al. v. Love*, 174 Fed. 59, 177 Fed. 493, which arose under the same constitutional provisions of Oklahoma, and to so eminent and able judges as Judge Sanborn and Judge Adams of the Eighth Circuit Court of Appeals, who

affirmed the order in *Love v. Atchison, T. & S. F. Ry. Co.*, 185 Fed. 321, and to this court when it denied a writ of certiorari in those cases in *Charles West, Atty. Gen. et al. v. Atchison, T. & S. F. Ry. Co.*, 220 U. S. 618.

Appellees speak of an “*ad interim* confiscation,” and treat it as an allowable thing. In no case of which we have knowledge has this court ever sanctioned even an “*ad interim* confiscation.” Where the property is sought to be taken *ad interim*, and whether the owner will ever receive just compensation for it depends upon a subsequent decision of the State Supreme Court, the owner is “not bound to take the risk of the decision” (*Union Pac. R. R. Co. v. Public Service Commission*, 248 U. S. 67, 70).

Appellees say that in the *Prentis* case it was held that the “legislative stage,” the “moment of legislation,” would not have passed until the Supreme Court of the State had acted on the appeal. But there is nothing in the *Prentis* case indicating that this court contemplated that the result of legislation, an immediately enforceable law, would come into existence until the Supreme Court had acted on the appeal. The legislative stage has been passed when a law, capable of enforcement and actually en-

forced, comes into being. The judicial stage has been reached when the State actually begins and carries on the confiscation of property; and in *Bacon v. Rutland R. Co.*, 232 U. S. 134, this court, speaking of the Prentis case, said:

“But it was laid down expressly that at the judicial stage the railroads had a right to resort to the courts of the United States at once.”

If it were true, as appellees say, that “the sole question is, who is to sustain the burden of inconvenience” during the pendency of the appeal, “who is to have the use of the money difference between” the Commission’s rates and just rates during that time, then appellees’ argument would be forceful. But that is not the question at all. If the “money difference” was being paid by the patrons and impounded, so that appellant could get it if it were finally judicially adjudged entitled to it, then appellant would not have sued before the determination of the appeal. The real question is whether the State can compel appellant to serve at confiscatory rates during the pendency of the legislative appeal, and take the risk of the decision, with the certainty that, if the order is affirmed, the just compensation to which appellant is entitled is lost for all time, and if it is reversed, then appellant is remitted to

the pursuit of more than 30,000 patrons for the collection of unsecured claims against them.

Answering a like contention in *Springfield Gas & Electric Co. v. Barker*, 231 Fed. 331, the District Court for the Western District of Missouri enlarged to three judges, Sanborn, Circuit Judge, and Pollock and Van Valkenburgh, District Judges, sitting, said:

“Counsel for defendants in their brief point out that, if its contention is sustained, complainant will seek to recover its losses by making charges against consumers in excess of the rates then in force. They say:

“‘After a final hearing, and these rates declared illegal, the complainant will be admirably situated to make such collections. Having a monopoly of the business, and power to discontinue the service at will, complainant has the whip hand and requires no aid from a court to maintain its rights.’

“A sufficient answer to this argument is found in the fact that consumers of electricity are constantly changing, and that additional charges could scarcely be enforced against those who had not enjoyed the lower rate. Moreover the powers of complainant are not so absolute as this suggestion of counsel would imply. It would, in most cases, be put to its recovery at law, and this would involve a multiplicity of suits, such as it is the province of equity to prevent.

“On the other hand, the injury to the moving party in this case will be certain, great, and

irreparable if its motion be denied and its contentions ultimately sustained, while the inconvenience and loss to each consumer will be inconsiderable and may well be indemnified by a proper bond. A course of business that will insure a prompt refund of charges ultimately adjudged to be excessive may easily be prescribed in a case like this."

This is borne out by the actual facts in Oklahoma (See appellant's original brief, pages 89 to 91).

Appellees refer to the statement in the Prentis case that considerations of comity and convenience had led the court ordinarily to decline to interfere by habeas corpus where the petitioner had open to him a writ of error to a higher court of the State in cases where there was no merely logical reason for refusing the writ. They omit to notice, however, the court's statement following that, namely, "The question is whether somewhat similar considerations ought not to have some weight here. *We admit at once that they have not the same weight in this case.*"

Appellees also overlook the following statement in that opinion:

"Although the appeal is given as a right, it is not a remedy, properly so-called. *At that time no case exists.*"

But, if confiscatory rates are being enforced pending the appeal, then a case would exist, the judicial stage would have been reached. This further shows the court's view that the rates would not be enforced, in the event of an appeal, until the appeal had been decided.

The underlying thought in the Prentis case was that no railway company or other public service corporation would be permitted to ignore the reasonable rate-making provisions of the constitution or laws of the State; that while the rates were in process of making, and before they had been put into effect, and while reasonable remedies were open to the public service corporation under the State law that might prevent the rates from ever becoming effective, such public service corporation would not be permitted to refuse to follow such reasonable provisions of the State Constitution or laws, and to sue in the Federal courts and thereby tie up the State rate-making machinery. The underlying thought was that it was the duty of such public service corporations to follow the remedies provided it by the State as far as it could go, and until it was made certain that the officials of the State would try to enforce a confiscatory rate. This is further shown by the following quotation from the opinion:

"We should hesitate to say, as a general rule, that a right to resort to the courts could be made always to depend upon keeping a previous watch upon the bodies that make laws, *and using every effort and all the machinery available to prevent unconstitutional laws from being passed.* It might be said that a citizen has a right to assume that the Constitution will be respected and that the very meaning of our system in giving the last word upon constitutional questions to the courts is that he may rest upon that assumption and is not bound to be continually on the alert against covert or open attacks on his rights in bodies that can not finally take them away. *It is a novel ground for denying a man a resort to the courts that he has not used due diligence to prevent a law from being passed.* But this case can hardly be disposed of on purely general principles. The question that we are considering may be termed a question of equitable fitness or propriety, *and must be answered on the particular facts.* The establishment of railroad rates is not like a law that affects private persons who may never have heard of it till it was passed. It is a matter of common interest, both to the railroads and to the public, and is watched by both with scrutinizing care. The railroads went into evidence before the commission. They very well might have taken the matter before the Supreme Court of Appeals. No new evidence and no great additional expense would have been involved."

But, if the confiscatory rates were to be in effect during the pendency of the appeal, a loss much

greater than the "additional expense" would have followed.

The foregoing showed that the underlying thought was that if the railway companies kept a previous watch upon the bodies that made the laws, used every effort and all the machinery available to prevent confiscatory rates from being put into effect, and notwithstanding that they were actually put into effect, then the railways had their remedy in the Federal court.

The question of comity or equitable fitness or propriety mentioned was the matter of following the remedies provided by the State in its rate making processes as far as the company could go without suffering confiscation of its property. We repeat again that if this court had affirmed the *final decrees* in the Prentis case under the circumstances there existing, the rate making provisions of the Virginia Constitution would have been effectually annulled, and ever after all public service corporations, upon the Commission's prescribing rates deemed confiscatory, would have gone directly into the Federal court for an injunction, and would have ignored the Supreme Court of Appeals as a part of the rate making machinery of the State. That was not done in

the case at bar. The injunction may be granted in this case, and every portion of the rate making processes of the Oklahoma Constitution and laws will still stand intact. The granting of the injunction here involves no violation of any rules of comity, equitable fitness or propriety.

**The contention that the refusal of the State Supreme Court to suspend the enforcement of the order pending the determination of the appeal was an act judicial in character, and renders the question of confiscation vel non res judicata.**

We discussed this question on pages 74 to 79, inclusive, of our original brief. We there showed that Section 20 of Article 9 of the Oklahoma Constitution provided that all appeals from the Commission should be to the Supreme Court only, and that no court of the State, "*except the Supreme Court by way of appeals as herein authorized,*" should "*have jurisdiction to review, reverse, correct or annul any action of the Commission within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties.*" The result of this is to forbid any court from suspending or delaying the operation of the

Commission's rate order made in the performance of its official duties, except the Supreme Court, and to forbid that court to do so except "*by way of appeals as herein authorized.*" The appeal provided for being legislative in character and the suspension of the order being authorized only "*by way of appeal,*" it follows that the supersedeas is incidental to the legislative appeal, and that the action of the court in granting or refusing it is legislative and not judicial in character.

To the foregoing we wish to add also a request for a consideration of Section 21 of Article 9 of the Oklahoma Constitution. That section is as follows:

"Upon the granting of an appeal, a writ of supersedeas may be awarded by the Supreme Court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the Supreme Court, no action of the Commission prescribing or affecting the rates, charges, or classifications of traffic of any transportation or transmission company *shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceeding resulting from such appeal,* until a suspending bond shall first have been executed and filed with, and approved by the Commission (or approved, on review, by the Supreme Court), payable to the State, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the

parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed or authorized by the final decision of the Court on appeal."

Note the provision that no action of the Commission prescribing or affecting the rates "shall be delayed or suspended in its operation *by reason of any appeal by such corporation, or by reason of any proceeding resulting from such appeal*, until a suspending bond shall have first have been executed." The Constitution itself recognizes that the delay or suspension of the order is an incident of the appeal; that upon the giving of a bond, the order may be delayed or suspended by reason of the appeal. In other words, the whole matter in the Supreme Court upon an appeal from the Corporation Commission, including suspending or refusing to suspend the order, is an act legislative and not judicial in character.

If the Supreme Court acts judicially in granting a supersedeas in such cases, then in what particular judicial way does it act? What is the particular nature and character of the judicial proceeding? *There is no such thing as a judicial suspension of legislation aside from enjoining its enforcement.* But the Constitution prohibits even the Supreme Court from

enjoining, restraining or interfering with the Commission in the performance of its official duties. In other words, the Constitution prohibits the exercise of judicial force against the Corporation Commission in the performance of its official duties, but grants the Supreme Court legislative power to suspend, repeal or confirm the Commission's orders.

Appellees say that the Constitution authorizes the Supreme Court, upon the granting of an appeal, to "award" a "writ of supersedeas;" and that "writs" are issued in judicial proceedings, and "award" is a term which denotes judicial consideration and action. In technical legal parlance, an award is the decision of arbitrators. In some states, by statute, a judgment or decree may be rendered upon it; but of itself it is without judicial force. While writs may be issued in judicial proceedings, they may also be issued by any department to which the sovereign or state commits the power. Moreover, the awarding or issuing of a writ is not an adjudication. Some judicial writs initiate litigation, and some follow an adjudication. But even if these terms ordinarily have the significance contended by appellees, that fact would not overbear the clear meaning of the Constitution that the Supreme

Court, *by way of* (the legislative) *appeal* "may suspend or delay the execution or operation" of the Commission's order, but may not do so by the exercise of judicial force.

The Napa Valley case, 251 U. S. 366, cited by appellees, when the facts are understood, is wholly without application here. That case affirmed *Napa Valley Electric Co. v. Railroad Commission of California*, 257 Fed. 197. The facts were that the Railroad Commission of California made an order fixing the rates of the Napa Valley Electric Company. The Public Utilities Act of California (Stat. Cal., Extra Session 1911, pages 18 and 55) gave to a party deeming himself aggrieved by an order of the Commission the right to apply to the Supreme Court of the State to have "the lawfulness of the original order or decision, or the order or decision on rehearing, inquired into and determined." The act provided that such review "shall not be extended further than to determine whether the Commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California." The act further provided that upon

the hearing "the Supreme Court shall enter judgment either affirming or setting aside the order or decision of the Commission." Judge Van Fleet held that the terms of the statute clearly imported that the review by the Supreme Court there contemplated was strictly a judicial one, before the court sitting in its capacity as a judicial tribunal, limited to a consideration of the purely legal aspects and propriety of the act of the Commission under review, and not, as in the *Prentis* case, as a part of the rate-making power of the state. He cited *Detroit & Mackinac R. Co. v. Michigan Railroad Commission*, 235 U. S. 402, where the distinction between a judicial and a legislative review by the Supreme Court of the state is stated.

The Napa Valley case in this court affirmed that decision of Judge Van Fleet. In other words, after the Railroad Commission of California had made the order, and after the Electric Company had filed its application for rehearing and the same had been denied, the Electric Company had two remedies: One to apply to the Supreme Court of the state for a judicial review of the Commission's order, the other to file an action in the federal court for an injunction against the enforcement of the order. *Bacon v.*

*Rutland R. Co.*, 232 U. S. 134. Either would have been a judicial proceeding. A final judgment in either would have been *res judicata*. The Napa Valley Electric Company elected to apply to the Supreme Court for a judicial review. The Supreme Court considered the application, and refused relief. Both Judge Van Fleet and this court held that the action of the Supreme Court was judicial, and its order refusing relief was *res judicata*.

In this case, however, the appeal is not judicial, but is purely legislative. The Supreme Court does not review the case judicially; but, as in *Prentiss v. Atlantic Coast Line Company*, it acts purely legislatively. *Atchison, T. & S. F. Ry. Co. v. State*, 23 Okla. 510; *Chicago, R. I. & P. Ry. Co. v. State*, 24 Okla. 370; *Atchison, etc., Ry. Co. v. Miller*, 28 Okla. 109. The underlying reasons, therefore, for holding the action of the Supreme Court of California in the Napa Valley case to be *res judicata* are absent here.

**Appellees' contention that the Commission's findings are not to be considered in determining whether the rates fixed are confiscatory.**

In *Interstate Commerce Commission v. Louis-*

*ville & N. R. Co.*, 227 U. S. 88, this court stated that administrative orders are void "*if the facts found do not as a matter of law support the order made.*" The Commission having found the value of appellant's property, and having found that a return of 8% upon the *depreciated original cost* thereof (denying appellant the benefit of all appreciation in the property) required a city gate rate of 35.2 cents for each and every thousand cubic feet of gas sold, both for domestic and for industrial consumption, and, in the face of that finding, having fixed the city gate rate at 25 cents per thousand for domestic gas and 20 cents for industrial gas, it is manifest that the facts found do not as a matter of law support the order made, and that the order is confiscatory on its very face.

Appellees now realize that fact; and, therefore, while still contending for the enforcement of the very rates fixed by the order, they nevertheless undertake to repudiate the findings contained in the order, and to deny to the findings any probative effect in determining whether the rates fixed in and by that order are valid or confiscatory.

They say that the Corporation Commission is not the only party defendant; that the cities of

Tulsa, Sapulpa and Claremore, with their city attorneys, were made parties, conceivably because their inhabitants were interested in the outcome of the litigation; that these parties may not themselves be satisfied with all the findings of the Commission, and yet that they find themselves confronted with a ready-made record not altogether to their liking or in accord with their ideas of the facts, but without means of refuting it; and that therefore the findings should be given no probative value in this case in determining whether the very rates, intended by law to be based upon the findings, are valid or confiscatory.

It is important in this connection to consider who the parties are that make that contention. They are, first, the Corporation Commission, that made the findings and the order. They are, second, the cities of Tulsa and Sapulpa and their city attorneys; for Claremore was eliminated from the case before the Commission, and was also eliminated from it in the United States Court long before the hearing upon the temporary injunction (Pr. Tr. 112). The cities of Tulsa and Sapulpa and their city attorneys were parties to the proceeding before the Commission. These are the parties that now undertake to repudiate the Commission's findings.

The Corporation Commission, which made the findings contained in the order, is an agency of the State, created by the Constitution, armed with all the state's authority in the premises, vested with full visitorial and inquisitorial powers, furnished by the state with a corps of engineers and accountants, and having at all times full access to appellant's offices and all its books, records and vouchers, and empowered and directed by the Constitution and laws of the state, in behalf of the state, to make such findings and orders, and whose findings are declared *prima facie* correct.

The Supreme Court of Oklahoma, in *Chicago, R. I. & P. Ry. Co. v. State*, 24 Okla. 370, held that it is not the order made by the Commission which is presumed to be correct, but that it is the facts found. In the first syllabus in that case the court said:

“ ‘All the facts upon which the action appealed from was based, and which may be essential for the proper decision of the appeal’ (Section 22, Article 9, Constitution) means the facts as found by the Commission, and does not include the evidence introduced at the hearing. *Facts found by the Commission are prima facie correct*, and can be overturned only under the rule announced in the case of *Atchison, T. & S. F. R. Co. v. State*, 23 Okla. 510.”

In *Missouri, K. & T. Ry. Co. v. State*, 24 Okla. 331, the Supreme Court of Oklahoma said:

"The Constitution clothes the order of the Commission with the presumption that it is *prima facie* reasonable, just and correct (Section 22, Article 9, Constitution). On appeal the burden is upon appellant to overcome this presumption. *This it may do by showing that the facts found affirmatively show the order to be unreasonable and unjust.*"

In *St. Louis & S. F. R. Co. v. Newell*, 25 Okla. 502, 507, the court said:

"The *prima facie* presumption that an order of the Corporation Commission is reasonable, just, and correct, which obtains by reason of sections 22 art. 9, of the Constitution, *applies only to the facts found by the Commission*, or that are established by evidence upon which the Commission failed to find a material fact; and, where a fact material to the reasonableness, justness, and correctness of an order is lacking in the findings of fact made by the Commission, and is not supplied by the evidence, the presumption obtaining by reason of said section of the Constitution does not apply. *C., R. I. & P. Ry. Co. v. State*, 24 Okla. 370; *M., K. & T. Ry. Co. v. State*, 24 Okla. 331, 103 Pac. 613. *Upon the facts found by the Commission and upon the evidence disclosed by the record, the order herein as made cannot be sustained as reasonable and just.*"

In the Supreme Court of Oklahoma, to which the appeal from the Commission was taken, the

findings of fact will have probative value, and unless they are found to be contrary to the clear weight of the evidence introduced before the Commission in the proceeding resulting in the order, they will be deemed correct, and the reasonableness and justness of the rates fixed will be tested by the findings; yet it is contended that the Commission's findings are entitled to no weight in the federal court in determining the validity of the very rates which the law contemplates shall be predicated upon the findings. These findings are the act of the State. They can not be repudiated. They were made after a hearing lasting from August 4, 1920, to June 25, 1921.

Moreover, this court, in *Interstate Commerce Commission v. Louisville & N. R. Co.*, 227 U. S. 88, in stating that it has been distinctly recognized that administrative orders, quasi-judicial in character, are void "if the facts found do not as a matter of law support the order made," showed that the validity of the order may be tested by the facts found by the administrative body.

In the dissenting opinion of Justice Brandeis in *Ohio Valley Co. v. Ben Avon Borough*, 253 U. S. 287, 299, he said:

"The case at bar is wholly unlike *Great Nor-*

*thern Ry. Co. v. Minnesota*, 238 U. S. 340, and *Union Pacific R. R. Co. v. Public Service Commission of Missouri*, 248 U. S. 67, where this court reversed the judgments as matter of law upon the facts found by the Commission."

And in *Oklahoma Operating Co. v. Love*, 252 U. S. 331, involving an order of the Corporation Commission of Oklahoma, this court said:

"It does not follow that the Commission need be restrained from proceeding with an investigation of plaintiff's rates and practices, so long as its findings and conclusions are subject to the review of the District Court herein. *Indeed, such investigation and the results of it might with appropriateness be made a part of the final proof in the cause.*"

Again, in *Wichita R. & Light Co. v. Public Utilities Commission of Kansas*, decided November 13, 1922, not yet officially reported, 43 Sup. Ct. Rep. 51, the judgment of the trial court was based upon the invalidity of the order of the Public Utilities Commission, the invalidity appearing on the face of the order. A reversal of that judgment by the Circuit Court of Appeals was itself reversed by this court on the ground that the invalidity of the order appeared on its very face; and this court held that an order of a public utilities commission must be based upon findings which support it. Thus, in the

opinion this court referred to the fact that under the laws of Kansas all orders and rates fixed by the Commission are deemed *prima facie* reasonable. But in the opinion this court said:

“But, as we have seen, there is no finding of reasonableness or unreasonableness. Nor can we suppose that the presumption was to obtain until there was such a finding.”

Further on this court said:

*“We conclude that a valid order of the Commission under the act must contain a finding of fact after hearing and investigation, upon which the order is founded, and that for lack of such a finding, the order in this case is void.”*

“This conclusion accords with the construction put upon similar statutes in other states. *Public Utilities Commission v. Springfield Gas Co.*, 291 Ill. 209, 125 N. E. 891; *Public Utilities Co. v. B. & O. S. W. R R. Co.*, 281 Ill. 405, 118 N. E. 81. Moreover, it accords with general principles of constitutional government. The maxim that a legislature may not delegate legislative power has some qualifications, as in the creation of municipalities and also in the creation of administrative boards to apply to the myriad details of rate schedules the regulatory police power of the state. The latter qualification is made necessary in order that the legislative power may be effectively exercised. In creating such an administrative agency the Legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain

rules of decision in the performance of its function. It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined, and show a substantial compliance therewith to give validity to its action. *When, therefore, such an administrative agency is required as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective."*

As to the statement that the Corporation Commission is not the only party defendant, inasmuch as it acts for and in behalf of the State and the public, and is the sole body in the State having power to make and enforce the rates, it was the only necessary party. In *Re Engelhard & Sons Co.*, 231 U. S. 646, 651, this court held that a city which had the power of making and enforcing rates was the representative of the public, and "that the only mode of judicial relief against unreasonable rates is by suit against the governmental authority which established them or is charged with the duty of enforcing them."

The statement that the cities of Tulsa and Sapulpa, and their city attorneys, who were made parties defendant herein, may not be satisfied with the findings of the Commission, and, if those findings be given probative effect, may find themselves

confronted with a ready-made record without the means of refuting it, in view of the facts, is peculiar. Under the rules of the Corporation Commission, when a public utility institutes a proceeding before it respecting rates, it is required to make all towns and cities whose inhabitants it serves parties to the proceeding, and to serve citation and a copy of the application upon the mayor and city attorney of all such towns and cities. Tulsa and Sapulpa were specifically made parties to this proceeding before the Commission (See title of Case, Pr. Tr. 71). Citation was served on the mayor and city attorney of each city. The mayor and city attorney of each city were furnished with a copy of the application. The city attorneys of both cities appeared in behalf of their respective cities in each and every hearing. They took an active part in the proceeding from the beginning to the end. They applied for and obtained numerous continuances for the purpose of preparing their case. They requested the Commission to hold special hearings of the case in each of those cities. This was granted. In addition to the hearings held in the case at the capitol, special hearings were held in the City of Tulsa, at the instance of the city attorney and special counsel employed by that city, on November 8th,

9th, 10th, 11th, 12th and 13th, 1920; and thereafter special hearings were held in the City of Sapulpa on November 29th and 30th, 1920. At the hearing in Tulsa, at the instance of the city attorneys of Tulsa and Sapulpa, the Corporation Commission permitted those attorneys to select an engineer and also an accountant, at the expense of the State, to check appellant's properties, records and vouchers in behalf of those cities. These engineers and accountants were in addition to those regularly employed and used by the Commission. Those attorneys selected their engineers and accountants, and all the inventories, books, records and vouchers of appellant were placed at their disposal. They spent considerable time in going over them. Neither the City of Tulsa nor the City of Sapulpa ever put either of them on the stand. Yet appellees say, as if Tulsa and Sapulpa had been strangers to this proceeding until it reached the federal court, that they may find themselves confronted with a ready-made record, in the making of which they had no part, and yet by which they might be bound.

Moreover, appellees expressly pleaded Order 1886 in their answer and made it Exhibit A thereto and a part thereof (Pr. Tr., 52, 53 and 71).

Under those circumstances appellee's present contention, that the findings contained in the order are not to be considered, is peculiar.

The validity of the Commission's order may properly be tested by the findings contained in the very order itself, and upon which the law intends that the order shall be predicated.

**The effect of the averment in the answer that the Commission is willing to entertain another application from applicant for an increase in rates.**

Appellees have hit upon the correct term characterizing this averment, namely, a "mere artful subterfuge."

Mr. Sharp, appellant's vice president and general manager, in his affidavit (Pr. Tr. 318), testified:

"Before this case was filed in this court two members of the Corporation Commission stated to this affiant that if complainant should file another application before the Commission for an increase in rates, each and every town and city affected would insist upon having a hearing in that particular town and city, and that the Commission could not hear such an application and make an order in it in less time than ten months; and said statement on the part of said Commissioners was and is true in fact."

This evidence was never disputed or controverted. The original hearing having lasted through a period of eleven months, and having resulted in rates confiscatory on the face of the order, appellees now contend that appellant should waive all its rights, lose all the time since it instituted the proceeding on August 5, 1920, when it was getting a rate of 48 cents per M for domestic gas and 33 cents for industrial, start a new proceeding before this same body, and while it is pending operate under domestic distributing rates averaging 44 cents per M and industrial distributing rates of 25 cents per M, with the result that it would have been operating at confiscatory rates ever since the order was made, and during the new proceeding, and at the conclusion of it would have the appeal and the injunction suit all to file over again.

If the Commission recognizes that it made a mistake, and is willing to rectify it, and conceives that it can do so after the appeal from order 1886 has been taken, it ought to do so without requiring appellant first to waive all its rights and put itself at the Commission's mercy. The Commission has the power to institute and carry on rate cases on its own motion.

The sole authority for the Commission's entertaining a new rate case during the pendency of an appeal from a former order, is found in Section 23, Article 9, of the State Constitution. The applicable portion of that section is as follows:

"The right of the Commission to prescribe and enforce rates, charges, classifications, rules and regulations affecting any or all actions of the Commission theretofore entered by it and appealed from, *but based upon circumstances or conditions different from those existing at the time the order appealed from was made*, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the Commission prescribing or altering such rates, charges, classifications, rules or regulations, shall be retroactive."

The foregoing is the sole source of the Commission's authority to make changes in rate orders which have been appealed from, during the pendency of the appeal; and its right and power to make such orders pending the appeal is expressly conditioned upon the then circumstances and conditions being different from those existing at the time the order appealed from was made; and it is expressly precluded from making its order retroactive.

Unless, therefore, appellant in going back to

the Commission could truthfully allege and show that the present circumstances and conditions are different from those existing when the Commission made the order, it could not state a case within the Commission's jurisdiction, unless it would waive all its rights, dismiss its appeal in the State Supreme Court and its case in the federal court, and start the whole matter anew. This would mean accepting the present rates as having been correct, foregoing all past and present claims for just compensation, and operating under the confiscatory rates until the Commission makes a new order.

Appellant can not truthfully allege, nor can it show, that the circumstances and conditions existing now, or existing at any time since the Commission made the order, are different from those existing when the order was made. What appellant complained of in the federal court was, not that the Commission's order was valid and reasonable when made, and had become unreasonable and invalid by a subsequent change of conditions; but it was that the Commission's order was invalid and confiscatory under the conditions existing at the time it was made and still existing. It complained that the Commission, in arriving at the rate base for the

city gate rate, omitted from consideration \$688,000 of property owned by appellant and used and useful in its transmission business. It complained that a finding by the Commission that a return of 8% upon *the depreciated original cost of appellant's property*, even as the Commission found the rate base, required a city gate rate of 35.2 cents per M for all gas sold, followed by an order fixing the rate at 25 and 20 cents per M, was confiscatory on its face. It complained that even the higher rates of 48 cents for domestic gas and 33 cents for industrial gas theretofore in effect, had brought appellant only half what the Commission itself found it was entitled to earn.

Appellees state that the Commission based its calculation upon appellant's sales of gas in preceding years, and that it was disappointed that appellant had not been able to sell as much gas as theretofore. But in the Commission's very order it found that the quantity of gas which appellant had been able to get and sell had steadily and progressively decreased each year, from 29 billion feet in 1917 to 20 billion feet in 1920 (Pr. Tr. 77), while the capital investment necessary to procure and furnish the gas and the expense of doing so had been progressively

increasing (Pr. Tr. 77). It found that the abnormal price of fuel oil which had prevailed during 1920, and which made a demand for industrial gas, no longer prevailed, but that on the contrary, the price of fuel oil had gone down so that it was then sold very cheaply in competition with gas (Pr. Tr. 95).

The Commission therefore had no right to assume, in the face of its finding as to the progressive decrease in the amount of gas appellant had been able to sell each year since 1917, and the reduction in the price of fuel oil, that appellant would be able to sell as much gas as it had even the year before. When this order was made on June 25, 1921, the price of coal and fuel oil had gone down, and appellant's sales of gas during the first half of 1921 were far below those during the first half of 1920. These facts were known to the Commission when it made the order (Pr. Tr. 318-9).

In its order the least return which it suggested as being reasonable for appellant's production and transmission property, considering the admittedly hazardous nature of the business, was 8% for interest or dividend and 8% for depreciation and amortization; and in their answer in this very case

appellees state that such rate of return is reasonable and just (Pr. Tr. 65). The Commission found the rate base of appellant's production and transmission property, including going concern value and working capital, to be \$16,476,150.46. Allowing the rate of return for interest or dividend and depreciation and amortization stated by the Commission in its order and in its answer to be reasonable and just, this would give appellant an earning on its production and transmission property over and above its expenses, not considering depreciation and amortization as an expense for this purpose, of \$2,636,184.07 per annum. The Commission found a value for appellant's distributing plants, excluding Claremore, Inola and Ramona, totaling \$2,046,600.94. It stated in its order that appellant was entitled to a return of 8% for interest or dividend and 5% for depreciation on the distributing plants (Pr. Tr. 98). This would give appellant a net earning upon its distributing plants, for interest or dividend and depreciation of \$266,058.12, making a total net earning of \$2,902,242.19 per annum. Appellant's net earnings for interest or dividends and for depreciation and amortization during the calendar year 1920, ending six months before the Commission made the order complained of, under the higher 48

cent domestic rate and 33 cent industrial rate, and when appellant was paying less for gas and selling more of it, was only \$1,460,748.02, or just half what the Commission found appellant was entitled to (Pr. Tr. 16, 121-2, 320).

Half of the calendar year 1921 had gone by when the Commission made the order in question. It knew the conditions under which appellant was operating at the time it made the order (Pr. Tr. 318-9).

We repeat therefore that the matter of which appellant complains has not been caused by a change in the conditions, but it complains that the order was and is confiscatory under the conditions existing at the time the Commission made it and still existing.

Appellees rely, in support of this contention, upon the case of *Galveston Elec. Co. v. Galveston*, 258 U. S. 388, in which, after finding that there had been no satisfactory proof that the rates complained of were confiscatory, after finding that the expenses of the street railway company were decreasing and its net earnings increasing, that the net earnings were larger under the five cent fare,

than they had been during the preceding year under the 6c fare; that "the occasion for the suit was solely the extraordinary rise in prices incident to the war," and that the succeeding period had been "one of continuous price recession," this court said:

"There is no reason to believe that the Board would not give full and fair consideration to a proposed change in rate if application were now made to it."

But that is no authority for the contention here made. There the proof did not show confiscation. Whether the five cent fare was confiscatory was conjectural; and before this court ever suggested that in the event the five cent fare should prove confiscatory there was no reason to believe that the Board would not give full and fair consideration to a proposed change in the rate if application were made to it, it first considered and determined whether the proof showed that the five cent fare was confiscatory, and held that the proof was insufficient. If the proof had satisfactorily shown that the five cent fare was confiscatory, this court would not have suggested even remitting the case to the city Board.

Again, in that case, this court stated that the occasion for the suit was solely the extraordinary

rise in prices incident to the war. In determining the rate base there was considerable controversy as to the values that should be taken, the railway company contending for a rate based upon the abnormally high cost of reproducing the property then existing. Here war prices had nothing to do with this order. The utmost consideration the Commission even suggested giving to reproduction values then existing was to offset the excess over original cost against depreciation on the property amounting to 18%. It stated that it would be just to offset depreciation amounting to 18% against appreciation running from 70% to 100% (Pr. Tr. 87); but it did not even do that. It found that on the basis of the *depreciated original cost* of the property appellant was entitled to a city gate rate of 35.2 cents per M for all gas sold (Pr. Tr. 93), and then fixed the rate at 25 cents for domestic and 20 cents for industrial gas. Yet reproduction cost at the end of the year 1921 was still 30% greater than original cost (Pr. Tr. 144, 206), and today unit prices are higher than they were in December, 1921.

In the Galveston case the court found "that gross revenues were steadily increasing, and that they were larger under the five cent fare than they

had been during the preceding year when the six cent rate was in effect." Here, there is no such contention. During 1920 appellant was receiving a domestic rate of 48 cents for its gas, and an industrial rate of 33 cents, was paying only six cents a thousand for most of the gas purchased, and still made only half what the Commission found it was entitled to make; and a large part of that was earned from the sale of industrial gas which the then abnormal price of coal and fuel oil made a demand for. Yet, on June 25, 1921, the Commission after finding that the amount of gas that appellant could get and sell was progressively declining, fixed an average domestic distribution rate of 44 cents per M and an industrial distributing rate of 25 cents per M, although appellant was then paying 10 cents per M for all gas it purchased, and to the knowledge of the Commission was selling much less than it had sold during the previous year.

In short, appellees in effect admit that they have prescribed and are enforcing a rate order confiscatory on its face. They have made no move to remedy or change it. They come into the federal court and say that if appellant will dismiss its case in that court and dismiss its appeal in the Supreme

Court, and file a new application before the Commission, lose all that time and everything growing out of the past that it is entitled to, and conform to the confiscatory rates while the new case is pending, it will hear and decide the new case, and at the conclusion of the hearing will fix such rates as it may deem proper; and this is put forth as a ground why the federal court should not take jurisdiction.

Appellees say that from the date of appellant's organization until April 18, 1918, the rates received by it were of its own fixing; yet they omit to consider the fact that appellant as now existing was organized through the consolidation of many companies only in 1917.

It is stated that the Commission on July 21, 1918, readjusted and increased appellant's rates, and that appellant did not indicate any dissatisfaction therewith and did not appeal.

This is answered in Mr. Sharp's affidavit on page 329 of the printed transcript. The increase in rates provided by the alleged order of 1918 was not permitted by the Commission to go into effect until September, 1919, more than a year thereafter, and in the interval between the application filed with the Commission and the taking effect of those

rates appellant had invested \$3,000,000 additional money in new lines to new fields (Pr. Tr. 329-330).

It is stated that order No. 1886 is largely an experiment, and that only time can tell what the result will be under it, because now appellant does not suffer the leakage in the plants of the independent distributing companies, but still suffers the leakage in its own plants. Here again appellees overlook the fact that the rate of 48 cents for domestic and 33 cents for industrial gas prevailing during the previous year, when appellant was paying only six cents a thousand for 90% of the gas it purchased gave appellant a net earning of only \$1,460,748.02 with which to pay interest or dividend and to take care of depreciation and amortization, although the Commission found that appellant was entitled for that purpose to a net earning of \$2,902,242.19. Test periods are not required "where the rate is so low, upon any reasonable basis of values, that there can be no just doubt as to its confiscatory nature, and in that event there should be no hesitation in so deciding and in enjoining its enforcement without waiting for the damage which must inevitably accompany the operation of the business under the objectionable rate." *Wilcox v. Consolidated Gas*

*Co.*, 212 U. S. 19, 42. Certainly test periods are not required where the rate order is confiscatory on its very face. But this order was tested for six months before the suit was brought, and resulted in an actual excess of operating expenses, not including depreciation and amortization as an expense, over gross income in the sum of more than \$93,000 (*Pr. Tr.* 370).

Reference is made to the fact that appellant did not lodge its appeal from the Commission in the Supreme Court of Oklahoma until the time allowed by law therefor had nearly expired. Appellees' purpose is to condemn the appellant in any event. They condemn it first because, as they contend, there has not been a sufficient test period. They condemn it next because a test period of six months did elapse. The facts, however, with respect to the appeal in the Supreme Court are stated in Mr. Sharp's affidavit on page 317 of the printed transcript. The appeal could not be lodged in the Supreme Court until the Commission's court reporters completed the transcript of the record, and it was lodged there the very day the record was completed and certified, and the reporters were at work upon the record from practically the date of the order until the appeal was

filed (Pr. Tr. 317-8). The size of the record was enormous (Pr. Tr. 118).

It is said that this case was heard in the District Court on verified bill, verified answer and affidavits, without opportunity for cross examination. Under the rules in the District Court applications for a temporary injunction are heard only upon the pleadings and affidavits; but each and every defendant in this case had an opportunity in the proceeding before the Corporation Commission to cross examine, and did examine and cross examine, each and every one of appellant's witnesses who made affidavits before the federal court.

It is said that the value of appellant's property rests upon the estimate of expert witnesses employed by the parties, and that the same presents conflicting opinions as to practically every proposition. There is no basis in the record for that statement. In the inventories and appraisals made, one by Mr. Musson, employed by appellant, and another by Mr. Durham, official valuation engineer of the Corporation Commission, each consisting of three large volumes, every item of property valued was counted and listed, and the value upon which the Commission fixed the rate base was depreciated

original cost. There was very little difference in the values found by the engineers employed by the appellant and those acting for the Commission (Pr. Tr. 213). The Commission expressly so stated in its findings (Pr. Tr. 85). The rate base fixed by the Commission itself in its order, while not as large as in appellant's opinion it should be, is nevertheless of itself such as to make the rates fixed by the Commission grossly confiscatory. It is said that the period during which the rates were in effect prior to the bringing of the suit was a period of unusual temperatures. This is answered in Mr. Sharp's affidavit on page 331 of the printed transcript. We might add that the temperatures prevailing since that time have been even higher than those prevailing previously, and up to February 1, 1923, in Oklahoma the present winter has been even milder than the preceding.

**The rates prescribed in the Commission's order are not, as appellees' contend, an increase over those previously prevailing, but, on the contrary, constitute a reduction.**

Prior to April 1, 1920, the rates for gas in all the towns and cities served by appellant, both directly and indirectly, were as follows:

First 100 M cubic feet per month 40c per M net.  
Next 400 M cubic feet per month 32c per M net.  
All over 500 M cubic feet per month 25c per M net.

During the effectiveness of those rates appellant was paying only six cents per M at the mouth of the well for the gas which it purchased. Appellant's return was wholly inadequate, and it had so informed the Commission and of its intention to file an application for an increase (Pr. Tr. 7-9).

The supply available to appellant was not adequate, and acute shortages were occurring. In March, 1920, the Creek County Gas Company, which had some gas which it had been selling to other parties, offered thereafter to sell same to appellant if appellant would pay it 10 cents per M therefor at the wells. Appellant stated that it could not pay that price at the rates it was getting, and especially as it required an additional investment on appellant's part to reach the gas. The Citizens' Gas Committee of Oklahoma City and the Corporation Commission were insistent that appellant procure this gas, and to enable it to pay the ten cents per M therefor, and also on account of the additional investment necessary to reach it, the leakage and the division of the proceeds with the independent distributing companies, the Commission stated that it would give appellant an increased rate to be in effect until the conclusion of the rate case which appellant

was then about to file. It therefore made an order fixing the following schedule of rates for natural gas in all the towns and cities served both directly and indirectly by appellant, to wit:

First 100,000 cubic feet per month 48c per M net.  
Next 400,000 cubic feet per month 40c per M net.  
All over 500,000 cubic feet per month 33c per M net.

The Commission stated that appellant's rate case ought to be concluded by October 1, 1920, and it therefore provided in the order that those rates should be in effect until that date, or until the further order of the Commission (Pr. Tr. 313).

After appellant filed with the Commission its application, a number of the towns and cities affected procured numerous continuances of the case from the Commission, which rendered the Commission unable to decide same by October 1, 1920, and in consideration of the continuances those towns and cities agreed that the 48c rate should be continued in effect beyond October 1, 1920, and until the Commission should decide the case (Pr. Tr. 313). And on October 1, 1920, competitive conditions forced appellant to increase the price for all gas which it purchased to 10 cents per thousand at the wells, which price it has paid ever since (Pr. Tr. 313). On

December 20, 1920, the Commission having taken a large volume of evidence, it made another order in which it recited the evidence which had been introduced as to the value of appellant's property and its expenses, stated that it was not at that time ready to determine the value of the property, but that it was clearly apparent that if appellant was not to be deprived of its properties by failing to receive compensation therefor during the time when the property was being used in rendering the service, then there must be provided additional funds for appellant. It stated that:

"It is clearly apparent from the evidence in this case that the present rates (meaning the 48 cent rate then in effect) applied to the available supply of gas will not produce sufficient funds to meet the various additional expenses referred to above, each of which must be met, if the available supply of gas is not to decline and the service deteriorate to a point where it will be utterly unsatisfactory and wholly inadequate" (Pr. Tr. 313-14).

And in that order it fixed a temporary rate to be effective from January 1, 1921, until March 31, 1921, as follows:

First 100,000 cubic feet per month, 58c per M.  
Next 400,000 cubic feet per month,, 50c per M.  
All over 500,000 cubic feet per month, 40c per M.

(See said order in full beginning on page 364 of the printed transcript.)

The Supreme Court of Oklahoma, on February 1, 1921, in the case of *Oklahoma City et al. v. Corporation Commission et al.*, 195 Pac. 498, issued a writ of prohibition against the enforcement of the rates provided in that order, not on the ground that appellant was not entitled to the rates therein provided, but on the ground that the Commission was acting beyond the scope of its power and jurisdiction in prescribing rates until it had completed the hearing and had arrived at a valuation of appellant's property, and also on the ground that the Commission had no power or authority to put those rates in effect in the towns and cities in which appellant did not own the distributing systems (Pr. Tr. 314-5).

Thereafter the 48 cent rate continued in effect. On April 1, 1921, however, the Commission still not having decided the case, in order that it might appear that the new schedule of rates which it then contemplated prescribing was an increase instead of a reduction, the Commission directed from the bench that appellant cease to charge the 48 cent rate, and that it put in effect a 40 cent rate, so that the Commission could say that the rates it had evidently determined to put in force were an in-

crease, not over the 48 cent rate in effect when the application was filed and during the times when the hearing was had, but merely over those in effect when the order was made (Pr. Tr. 313-315).

The schedule of rates prescribed in Order 1886 on June 25, 1921, provided an average domestic distribution rate for appellant of 44.1 cents per M (see pages 124 to 127 of appellant's original brief, where the calculation is made), and an industrial distribution rate of 25 cents per M, as against a domestic distribution rate of 48 cents per M and an industrial distribution rate of 33 cents per M in effect when the application was filed and during the entire period of the hearing until April 1, 1921, and which it was agreed should continue in effect until the Commission made the order in the rate case. In other words, order 1886 made a reduction of four cents per M in the domestic distribution rate and eight cents per M in the industrial distribution rate, and this notwithstanding on December 20, 1920, the Commission had found that appellant should have a domestic rate of 58 cents per M and an industrial rate of 40 cents per M.

The foregoing is the sole basis of appellees' contention that order No. 1886 was an increase in rates,

and that contention also may therefore properly be characterized as another "mere artful subterfuge."

**Whether appellant's production properties and expenses are to be considered in fixing its rates.**

We discussed this question in our original brief, pages 136 to 154. Here we shall confine ourselves merely to answering a few statements made by appellees respecting the matter.

Not only did the Commission, in its order in this case, purport to consider appellant's production properties and expenses, and not only had it done so theretofore in every natural gas rate case before it; but also in this case none of the towns and cities in the proceeding before the Commission even made the contention that it should not do so.

In appellees' brief it is stated that it is true that in its order the Commission considered appellant's production properties and expenses in fixing the rate and rate base, but that the reason it did so was that the Commission was not able from the data at hand to separate the production from the transmission property, and that for the purpose of affording appellant the relief of which it was in urgent need, the Commission hastened to make the

order without taking the time to make the separation, and therefore included the production property in its order. In view of the fact, however, that the relief afforded appellant was a reduction in domestic rates from 48 to an average of 44 cents per M, and in industrial rates from 33 to 25 cents per M, it is evident that the desire to alleviate appellant's distressful condition, which the Commission in its order of December 20, 1920, found existing, was not the motive for including the production property, and that the only reason this also is not a "mere artful subterfuge" is the fact that it is not artful.

Nor is it true that the Commission was not able to separate the production from the transmission property. The inventories and appraisals before the Commission showed exactly what production properties were owned by appellant and the values thereof. All the operating and accounting reports before the Commission showed the production expenses.

Appellees say that appellant's contention that its production properties are essential in the rendition of its service, and are to be considered in fixing rates, "is as fallacious as would be the claim of a

company which used coal to generate its electric current that coal mines, machinery and properties owned by it and from which it produced its coal, should be valued and included in a rate base, and that the expenses of its mining operations should be embraced in its operating expense account in ascertaining a proper rate to be paid by purchasers of electric current." To this we have two answers to make: First, the very thing which appellant furnishes is natural gas, whereas an electric company does not furnish coal but only furnishes electric current. If instead of using an electric company as an illustration, appellees had used a coal company, then would they say that in determining the proper price for coal, the value of the coal mines, machinery and properties, and the expense of operating them, would not be considered? Second, also, if the facts were that the electric company was not able to purchase all the coal necessary in the production of its electricity, so that it was necessary that it acquire coal mines, machinery and properties, and that it operate them for the purpose of obtaining the necessary amount of coal with which to generate the electricity, as appellant is not able to purchase all the gas required (Pr. Tr. 339-340), would a Commission, in fixing its rates, be justified

in refusing to consider the value of the coal mines, machinery and properties, and the expense of operating them? Would it be justified in refusing to allow the electric light company any return upon the necessary investment in coal mines which it was necessary that it own and operate? Would it be justified in refusing to allow as expense the actual and necessary cost of the coal to it? If the company was unable to buy in the open market all the coal necessary, and it purchased a coal mine and operated it solely for the purpose of obtaining the coal with which to generate electricity, and not for the purpose of speculation or of selling the coal, would not the coal mine be as necessary and useful as the dynamos and other machinery?

As showing the situation, it is said that in 1919 appellant spent \$855,000 in drilling for gas. Yet, with all the gas which it was able to produce by drilling, augmented by all the gas it was able to purchase from all the producers in the fields, the quantity during the winter of 1919-20 was inadequate for appellant's needs, there was a shortage of gas, and the Commission made an order requiring appellant to discount and rebate its patrons' gas bills because the gas was short (Pr. Tr. 338-9,

333). How much greater would the shortage have been if appellant had not spent the money for drilling? And the Commission coerces appellant to drill by requiring it to discount its bills when shortages occur. Appellees say that appellant is required to assume the risks and hazards of the business. When appellant starts to drill, even in proven territory, it never knows whether the well will be a producer or a dry hole. That is one of the risks. Appellees' position is that appellant is bound to take that risk, but can charge as expenses only the wells which happen to be producers. Complaint is made that appellant drilled 21 dry holes on the Osage lease, which was executed by the Secretary of the Interior. The terms of that lease required appellant to do the drilling, and to pay for ten million cubic feet of gas per day, whether that amount was produced and used or not (Pr. Tr. 336). The Corporation Commission was insistent that appellant procure this lease. It was familiar with the terms of it. Other parties were undertaking to procure gas leases upon that same acreage, and appellant was required to meet their terms. The Corporation Commission itself assisted appellant in procuring the Secretary of the Interior to grant it that lease with those terms. Can it then deny to

appellant the expenses incurred in conforming to the terms of the lease? The lease is now a valuable producer.

The evidence also shows that the Corporation Commission on July 19, 1920, wrote appellant and stated that if it did not put on an intensive drilling campaign during the summer, and if a shortage of gas resulted in the winter, it intended to put appellant in the hands of a receiver and keep it there (Pr. Tr. 338-9).

Appellants say that it is abhorrent to every conception of the proprieties for a natural gas company to engage in wildcatting for gas. Yet, each winter that the gas is short, appellant is required to rebate and discount its bills. When the gas is short, the Commission says that appellant has not done enough drilling for gas, and it will therefore penalize it (Pr. Tr. 332-3). Then, having drilled, the Commission now takes the position that appellant is not entitled to the expense of doing so.

Appellees say that if appellant explores and drills for gas and loses, the loss is its own; and that if it succeeds the gains are its. But the Commission will not permit it to have any.

Appellees speak of the elimination from appellant's capital assets of its Hogshooter properties. The gas from those properties was sold, and with the proceeds the original pipe line from Tulsa to Oklahoma City was built. That pipe line still exists and is in use, so that in fact there was merely a conversion of the Hogshooter properties into a pipe line (Pr. Tr. 328-9).

**The valuation of the property.**

In a further endeavor to repudiate their own findings made after an investigation lasting eleven months, appellees now say that they do not believe that the original cost of appellant's properties was as great as they found it to be after an investigation lasting eleven months. The reason they give is this: In 1917 appellant increased its capital stock from \$4,000,000 to \$10,000,00, and at the same time issued \$1,356,000 of the increase for cash, \$2,000,000 for properties theretofore owned by the Osage & Oklahoma Company, \$2,000,000 for properties theretofore owned by the Caney River Gas Company, \$100,000 for the Enid Natural Gas Company's properties, \$250,000 for the Peoples Fuel & Supply Company's properties, and \$300,000 for the Oklahoma Fuel Supply Company's properties. It is pointed

out that an appraisal was made of the properties of the merged companies by disinterested parties, and detailed information and vouchers were made as the basis for the merger. It is stated that under the laws of Oklahoma stock can not be issued for less than par in money or property. We might state here that no one has ever attacked the proceeding upon the ground that the property acquired was not worth the stock issued for it, or upon any other.

It is stated that the property of the Osage and Oklahoma Company was not worth \$2,000,000 and reference is made to an order of the Commission respecting the alleged value of the Osage and Oklahoma's property. Before this merger was made, the entire matter of the merger, the companies that were proposed to be merged, the properties that were proposed to be taken and their values, were laid before the Governor of Oklahoma, the Attorney General of Oklahoma and the Corporation Commission of Oklahoma, and the consent of said three departments to said merger was obtained (Pr. Tr. 323-324) The facts with regard to the Commission's appraisal of the property of the Osage and Oklahoma Company are stated in Mr. Sharp's affidavit on pages 335-7 of the printed transcript.

It is said that a large part of the capital stock of these various companies was paid for in property. Was there anything either morally or legally wrong in that? Is it to be assumed that the parties were cheats and frauds, and that the property was not worth what it was put in for? In addition to that, the Oklahoma Natural Gas Company, organized on October 9, 1906, with a capital stock of \$3,000,000, increased on March 11, 1907, to \$4,000,000, operated from October 9, 1906, to December, 1910, a period of four years, without paying to its stockholders one cent of dividends, putting all the earnings of the company back into the property. In December, 1910, it paid a dividend of only 1%. During 1911 it paid a dividend of only 3%. In 1912 it paid a dividend of 4%, and in each of the years 1913, 1914, 1915 and 1916 it paid a dividend of only 5% per annum, putting all the remainder of its earnings back into the property (Pr. Tr. 324-5). The same things are true with respect to the other companies (Pr. Tr. 325). Appellees' idea seems to be that nothing is to be considered except the original capital stock subscribed (and that that is to be discounted because in some instances it was paid for in property), and the stock subsequently issued and purchased for cash and that the additions to the

property acquired and constructed out of earnings which the companies had honestly and legitimately earned under their franchises to which the stockholders were entitled in the form of dividends, which dividends they forewent, should not be considered. Moreover, rate bases are not fixed on capitalization but on valuation.

Furthermore, this contention is made, notwithstanding the actual property used and useful by the company was counted, itemized, listed and appraised upon the basis of original cost, both by the Commission's engineers and accountants, and by those employed by appellant.

Moreover, appellees omit to consider the fact that appellants had outstanding \$1,010,000 of bonds which had gone into the property, and \$1,660,000 of money borrowed which had also gone into it.

Mr. J. M. Gayle, an auditor and accountant, made an audit of appellant's vouchers showing the actual cost of appellant's property then used and useful in its business to be \$16,190,382.40; and he testified that the actual vouchers which had paid for all the items were in the files except for \$9,588.91. This audit was not of all the property appellant and the constituent companies had purchased from the

beginning, but he put in red all the vouchers for property that had become depleted or obsolete or had been abandoned, and subtracted that from the total, confining the matter to the property then used and useful. In appellant's brief it is stated that Mr. Gayle testified that the amount mentioned included the entire expenditure for drilling wells, without separating or differentiating the dry from the producing wells. This statement is not correct. The following is a quotation from page 88 of the Commission's official transcript of Mr. Gayle's testimony:

"Q. What portion of your \$16,000,000 is charged as an investment to drilling wells? Have you that separated?

A. Yes, sir. Drilling is \$239,965.57.

Q. Drilling of all wells?

A. That is the distribution.

Q. What have you charged there for leases that you carried?

A. Actual cost for leases \$18,371.18.

Q. The item of drilling wells and leases is not a very big item compared with the whole?

A. Oh no. That is from this actual distribution."

Yet appellees seek to convey the impression that

Gayle included in his audit of the vouchers of the actual cost of appellant's property "the entire expenditure for drilling wells," and that in addition to that appellant also charged the cost of the wells as an expense. All that went into Gayle's item of wells was merely the property equipment in the wells, such as pipe and pumps, which, upon the exhaustion of one well could be pulled and removed and used in others. All the labor items that went into the drilling of wells; payments to contractors, etc., were charged as expense, and never went into the capital account. In other words, the cost of drilling wells was never included in the rate base.

Appellees lay great stress upon an affidavit made by C. S. Thompson, and filed by them in the federal court in which he criticizes appellant's methods of accounting, and purports to state facts which he says he obtained from appellant's reports on file with the Corporation Commission. The statements are purely conclusions of law. Thompson did not purport to reproduce any of the reports or state any of the figures from which he made his deductions. This affidavit is a pure fake. No reports were ever filed with the Corporation Commission which contained any such statements (Pr. Tr.

376-8). If there had been, certified copies of them would have been obtained and filed in the federal court. He does not profess to itemize any reports, give the dates of any of them, or give the figures contained in them. He professes merely to give the conclusions which he says he deduced from them.

In his affidavit Thompson states "that the company has from time to time paid dividends on their stock outstanding, which they have put into their ordinary operating expenses, and which should not be included therein, but should be carried as an operating account, as it goes to make up a part of the total percentage which they are allowed to earn." The company never charged dividends as an operating expense at any time in its history. The matter to which Thompson there referred is not the *operating statement* but the company's *profit and loss statement* of December 31, 1920 (Pr. Tr. 255), which was prepared for its directors and which appellees introduced in evidence. There the company deducted the dividend paid for the purpose of showing what was done with the earnings. The net operating income from gas of \$1,460,748.02 is shown. The dividend is shown. The net operating

income of \$1,460,748.02 was exactly what appellant had contended before the Commission that it was and exactly what it contended before the United States court. Yet Thompson concludes and alleges that appellant was charging dividends as an expense, deducting it from the net operating income, and was undertaking to deceive the Commission and the federal court by contending that its profit was only the difference. That is the sole basis of Thompson's statement that the company had charged dividends as expense; and all the rest of his statements are of a piece with this.

#### **Amortization and depreciation.**

Appellant will not discuss this question. In view of the undisputed facts, it would be a waste of time to discuss the propriety of allowing any certain percentage for depreciation and amortization. The rates prescribed by the Commission had been in effect for six months when this suit was brought; and, without making any deduction from the gross earnings for amortization and depreciation, those rates had caused appellant a deficit of more than \$93,000, being the actual excess of out of pocket operating expenses over gross income (Pr. Tr. 370).

Applying the rates prescribed by the Commis-

sion to the business done during the year beginning November 1, 1920, and ending October 31, 1921, would have brought appellant a net income on its production and transmission property of only \$299,079.81, without charging to expense anything for either amortization or depreciation (Pr. Tr. 208-9).

Appellant's actual net income during the year 1921 upon its production, transmission and distribution properties combined at the rates actually existing during that year, without deducting anything for amortization or depreciation, was only \$534,615.95 (Pr. Tr. 371), and during the first three months of that year, the three coldest months (up to April 1, 1921), appellant was receiving 48 cents for domestic gas and 33 cents for industrial gas, as against an average domestic rate of 44 cents and an industrial rate of 25 cents prescribed by order 1886.

In the face of those facts there is no occasion for any elaborate discussion as to what appellant should be allowed for amortization and depreciation in determining whether the order is confiscatory.

The rates of other natural gas companies, comparable with appellant in size and conditions of operation, and with which appellant must compete

in getting its gas, range from 58c to \$1 per thousand  
(Pr. Tr. 129, 134-6).

Respectfully submitted,

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AMES, CHAMBERS, LOWE & RICHARDSON,  
*Of Counsel.*

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 419.

OKLAHOMA GAS & ELECTRIC COMPANY AND MUSKOGEE  
GAS & ELECTRIC COMPANY, APPELLANTS,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLA-  
HOMA, CAMPBELL RUSSELL, ART L. WALKER, AND  
E. R. HUGHES, &c., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF OKLAHOMA.

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1 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Citation.*

To Campbell Russell, Art L. Walker, and E. R. Hughes, constituting the Corporation Commission of Oklahoma; the Corporation Commission of the State of Oklahoma, George F. Short, Attorney General of Oklahoma, and the City of Oklahoma City and C. H. Ruth, and the City of Muskogee and W. P. McGinnis, and the City of Enid and F. W. Herndon, and the City of El Reno and M. B. Cope:

You are hereby cited and admonished to be and appear in and before the Supreme Court of the United States to be held in the City of Washington, in the District of Columbia, on the 12th day of June, 1922, pursuant to an order allowing an appeal filed and entered in the office of the Clerk of the District Court of the United States for the Western District of Oklahoma from an interlocutory decree denying an application for a temporary injunction, signed, filed and entered on the 27th day of April, 1922, in that certain suit in equity numbered 502 on the docket of this court, wherein the Oklahoma Gas and Electric Company, a corporation, and Muskogee Gas and Electric Company, a corporation, are complainants, and you are defendants and appellees, and show cause, if any there be, why the decree rendered against the said appellants, in said order allowing appeal mentioned, should not be corrected, and why justice should not be done to the parties in that behalf.

Witness the Honorable John H. Cotteral, United States District Judge for the Western District of Oklahoma, this 13th day of May, 1922.

JOHN H. COTTERAL,  
*United States District Judge for the  
Western District of Oklahoma.*

3 In the District Court of the United States for the Western District of Oklahoma.

*In Equity.*

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainant,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Citation.*

Service of a copy of the citation in the above styled and numbered cause, is hereby accepted this 16th day of May, 1922.

CORPORATION COM.,  
STATE OF OKLA.,  
By E. S. RATLIFF,  
*Counsel.*

4 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainant,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Citation.*

Service of a copy of the citation in the above styled and numbered cause, is hereby accepted this 16th day of May, 1922.

GEO. F. SHORT,  
Attorney General.  
E. L. FULSON,  
Assistant Atty. Genl.

5 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainant,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Citation.*

Service of a copy of the citation in the above styled and numbered cause, is hereby accepted this 19th day of May, 1922.

C. H. RUTH,  
Atty. for Okla. City.

6 In the District Court of the United States for the Western  
District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainant,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Citation.*

Service of a copy of the citation in the above styled and numbered cause, is hereby accepted this 16th day of May, 1922.

W. P. MCGINNIS.

7 In the District Court of the United States for the Western  
District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainant,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Citation.*

Service of a copy of the citation in the above styled and numbered cause, is hereby accepted this 16th day of May, 1922.

GEO. H. WALKER, Mayor.

8 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainant,  
vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Citation.*

Service of a copy of the citation in the above styled and numbered cause, is hereby accepted this 18 day of May, 1922.

F. W. HERNDON.

9 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainant,  
vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Citation.*

Service of a copy of the citation in the above styled and numbered cause, is hereby accepted this 16 day of May, 1922.

M. B. COPE,

*Atty. of Record,  
Former City Attorney.*

J. N. ROBERSON,  
*City Attorney.*

10 [Endorsed:] No. 502, Eq. Filed May 20, 1922. Arnold C. Dolde, clerk, by F. G. Offutt, deputy. Rainey and Flynn, Attorneys & Counselors, American National Bank Building, Oklahoma City.

11 In the District Court for the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Défendants.

*First Amended Bill of Complaint.*

The Oklahoma Gas and Electric Company, and the Muskogee Gas and Electric Company, complainants herein, bring this bill of complaint against the Corporation Commission of the State of Oklahoma, and Campbell Russell, Chairman, Art L. Walker and E. R. Hughes, members of the Corporation Commission of the State of Oklahoma, and against S. P. Freeling, Attorney General for the State of Oklahoma, and against the City of Oklahoma City and its attorney, C. H. Ruth, the City of Muskogee and its attorney, W. P. McGinnis, the City of Enid and its attorney, F. W. Herndon, and the City of El Reno and its attorney, M. B. Cope, and each of them, and allege the following:

I.

The complainants allege that the Oklahoma Gas and Electric Company and the Muskogee Gas and Electric Company are, and each of them were, at all times hereinafter mentioned, corporations duly organized and existing under and by virtue of the laws of the State of Oklahoma, and that they and each of them are residents of the said State, and that their chief offices in said State are in the City of Oklahoma City, Oklahoma County, State of Oklahoma, and within the jurisdiction of the United States District Court for the Western District of Oklahoma, and that they are, and each of them were, at all times hereinafter mentioned, engaged in, and duly authorized to engage in the business of distributing natural gas in the cities and towns hereinafter mentioned.

12

The complainants, and each of them, allege that the Oklahoma Gas and Electric Company is, and at all times hereinafter mentioned was engaged, and duly authorized to engage in the business of distributing natural gas in the cities of Oklahoma City, Enid and El Reno, and in the towns of Bethany, Britton and Yukon, under franchises granted to it by the cities and towns last hereinabove referred to, and that under a lease from the complainant Muskogee Gas and Electric Company, it is, and at all times hereinafter mentioned was engaged in, and authorized to engage in the business of distributing natural gas in the city of Muskogee, Oklahoma, under a franchise granted by said city to said Muskogee Gas and Electric Company.

The Complainants, and each of them, allege that the Muskogee Gas and Electric Company is the owner of the system for the distribution of natural gas in the city of Muskogee, Oklahoma, and also is the owner of a franchise for the distribution of natural gas in said city of Muskogee, granted by said city of Muskogee to it, the Muskogee Gas and Electric Company, and that the Muskogee Gas and Electric Company did, by lease duly executed and delivered, transfer its rights for the distribution of natural gas in the said City of Muskogee, Oklahoma, and the use of its system for the distribution of natural gas in the said city of Muskogee, Oklahoma, to the complainant Oklahoma Gas and Electric Company, and that the latter company is, and at all times hereinafter mentioned, was engaged in, and duly authorized to engage in the distribution  
13 of natural gas in said City of Muskogee.

## II.

The complainants and each of them allege that the Corporation Commission is, and was at all times hereinafter mentioned, an administrative body created by the Constitution of the State of Oklahoma, having its offices and headquarters and principal place of business in the city of Oklahoma City Oklahoma County, State of Oklahoma, and within the jurisdiction of the District Court of the United States for the Western District of Oklahoma, and that the defendants, Campbell Russell, and Art L. Walker are, and at all times hereinafter mentioned were the duly elected, qualified and acting members of the Corporation Commission of the State of Oklahoma, with their headquarters in Oklahoma City, Oklahoma County, State of Oklahoma, and that the defendant E. R. Hughes, since the 10th day of January, 1921, and at all times thereafter hereinafter mentioned was a duly elected, qualified and acting member of the Corporation Commission of the State of Oklahoma, and that the said defendants, Campbell Russell, Art L. Walker, and E. R. Hughes are, and since the 10th day of January, 1921, were at all times hereinafter mentioned the duly elected, qualified and acting members of the said Corporation Commission of the State of Oklahoma.

The complainants and each of them allege that S. P. Freeling is, and was at all times hereinafter mentioned, the duly elected, qualified and acting Attorney General for the State of Oklahoma, with his

official headquarters in Oklahoma City, Oklahoma County, State of Oklahoma, and within the jurisdiction of the District Court of the United States for the Western District of Oklahoma, and under and by virtue of the laws of the State of Oklahoma is, and was  
14 at all times hereinafter mentioned, the duly authorized, qualified and acting Attorney for said Corporation Commission of the said State of Oklahoma.

Your complainants and each of them allege that this is a suit in equity between citizens of the same state arising under and involving the construction and application of the Constitution and laws of the United States, and that the amount in controversy, exclusive of interest and costs exceeds the sum of Three Thousand (\$3,000.00) Dollars.

Your complainants and each of them allege that they are engaged in serving the public with natural gas through distributing systems owned and operated by them under the conditions hereinbefore referred to in the cities of Oklahoma City, Enid, El Reno and Muskogee, and the towns of Bethany, Britton and Yukon, and that the natural gas which is distributed in the said cities and towns has heretofore been purchased by the Oklahoma Gas and Electric Company under contracts entered into with the Oklahoma Natural Gas Company, which contracts, the Corporation Commission of the State of Oklahoma, by its Order No. 1886, in cause No. 4023, on the 25th day of June, 1921, abrogated.

Your complainants and each of them allege that the said contracts in substance provided that the complainants should pay to the Oklahoma Natural Gas Company in the cities of Oklahoma City, Enid and El Reno and the towns of Bethany, Britton and Yukon, two-thirds ( $\frac{2}{3}$ ) of all collections from the sale of natural gas to domestic consumers, and three-fourths ( $\frac{3}{4}$ ) of the collections from the sale of natural gas to industrial and manufacturing consumers, and in substance provided that the complainants should pay to the Oklahoma Natural Gas Company two-thirds ( $\frac{2}{3}$ ) of the collections from gas sold to consumers in the said City of Muskogee.  
15

Your complainants and each of them further allege that in the order abrogating said contracts the Corporation Commission of the State of Oklahoma, provided that thereafter, instead of payment being made in accordance with the said contracts, payment should be made by the complainants to the Oklahoma Natural Gas Company at the rate of twenty-five cents (25¢) net per thousand cubic feet measured at the boundary of each town and city, with the proviso, however, that for gas bought by the distributing companies, namely, the complainants herein, and by them sold to patrons or customers using more than five hundred thousand cubic feet each month, the distributing companies, complainants herein, should pay to the Oklahoma Natural Gas Company only the sum of twenty (20¢) net per thousand cubic feet for the gas used by each consumer of each distributing company in excess of five hundred thousand cubic feet per month.

Your complainants and each of them further allege that they

and each of them, in defense of its said contracts, sought a writ of prohibition from the Supreme Court of the State of Oklahoma in order to prevent the said Corporation Commission from assuming jurisdiction for the purpose of abrogating said contracts, which writ was, by the Supreme Court of the State of Oklahoma, denied, and thereupon these complainants and each of them, then appealed to this Court for an injunction enjoining the said Corporation Commission last hereinabove referred to, which application was, by this Court, denied, and an appeal was then taken to the United States Supreme Court but which said appeal has been abandoned

16 and the appeal dismissed for the reason that in said application to this Court only the question of jurisdiction and power of the Corporation Commission to enter said order was or could be raised.

Your complainants and each of them further allege that from the said Order of the Corporation Commission your complainants and each of them did prosecute an appeal to the Supreme Court of the State of Oklahoma, which said appeal has since been dismissed.

Your complainants and each of them state that from the 1st day of September, 1919, up to and including the 30th day of April, 1920, the rates for natural gas consumed in the cities and towns hereinbefore referred to, under Order of the Corporation Commission and the contracts hereinbefore referred to, were as follows:

For the first 100 M cubic feet, 40¢ net per M cu. ft.

For the first 400 M cubic feet, 32¢ " " "

For all excess 500 M cubic feet, 25¢ " " "

and that from the 1st day of May, 1920, up to and including the 31st day of March, 1921, the rates for natural gas, under Order of the Corporation Commission and the contracts hereinbefore referred to, in the cities of Oklahoma City, El Reno and Muskogee, and the towns of Bethany, Britton and Yukon, were as follows:

For the first 100 M cubic feet 48¢ net per M cu. ft.

For the next 400 M cubic feet 40¢ " " "

All excess of 500 M cubic feet 33¢ " " "

and that the rates for natural gas consumed in the City of Enid remained the same as hereinbefore stated.

Your complainants and each of them allege that on the 1st day of April, 1921, by expiration of the Order of the Corporation Commission last referred to, fixing rates in the cities of Oklahoma City, El Reno, Muskogee, and the towns of Bethany, Britton and

17 Yukon, the rates for natural gas in the said last mentioned cities and towns reverted to the following schedule.

For the first 100 M cubic feet 40¢ net per M cu. ft.

For the next 400 M cubic feet 32¢ " " "

All excess of 500 M cubic feet 25¢ " " "

the rates for the city of Enid remaining the same as heretofore stated.

Your complainants and each of them state that under Order No. 1886 made by the Corporation Commission on June 25th, 1921, hereinbefore referred to, your complainants and each of them are compelled to pay to the Oklahoma Natural Gas Company in addition to the gas sold by complainants to consumers twenty-five cents (25¢) per thousand cubic feet for all gas delivered at the city border and not accounted for, which under the contracts theretofore existing your complainants were not compelled to pay for, and that under the said order the complainants herein are compelled to assume all loss in collections, which prior to the issuance of the said Order, was not the case.

Your complainants and each of them state that for many years prior to the issuance of said Order No. 1886 by the Corporation Commission of the State of Oklahoma, and under the contracts theretofore in existence, they and each of them had distributed natural gas in the cities and towns herein referred to without receiving an adequate return on the property used and useful in distributing natural gas to the said cities and towns and the inhabitants thereof, and that after the promulgation of said Order No. 1886 by the said Corporation Commission, the returns on the property used and useful in distributing natural gas in the said cities and towns, to your complainants and each of them, were greatly reduced and that therefore your complainants and each of them applied to the Corporation Commission for an increase in rates in all of the cities and towns

18 served by them and each of them, and hereinbefore referred to, and asked that rates be fixed which would reasonably compensate your complainants and each of them for the use of the property used and useful in distributing natural gas in the cities and towns herein mentioned, and asked that rates be fixed at not less than sixty (60¢) cents in the City of Oklahoma City and the towns of Bethany, Britton and Yukon, and Eight-eight (88¢) in the City of El Reno, Sixty-five (65¢) cents in the City of Enid, and Eighty (80¢) cents in the city of Muskogee, and in said application your complainants and each of them asked that a valuation of the property of the complainants and each of them, used and useful in distributing natural gas in the cities and towns herein referred to, be fixed, and reasonable rates allowed, and your complainants and each of them further state that the said Corporation Commission, without a hearing, and as a temporary order, fixed rates for natural gas effective as of July 1st, 1921, and without making a finding as to the valuation of the property used and useful in distributing natural gas in the cities and towns herein referred to, as follows:

Oklahoma City, and the towns of Bethany, Britton and Yukon, forty-two (42¢) net per M cubic feet for the first 500 M cubic feet, and twenty-five (25¢) per M cubic feet for all excess cubic feet.

In the cities of El Reno, Enid and Muskogee, forty-five (45¢) net for the first 500 M cubic feet, and twenty-five cents (25¢) net per M cubic feet for all excess cubic feet.

Your complainants and each of them allege that these rates have been in force and effect since the 1st day of July, 1921, and that the same are, and at all times herein referred to, were inadequate and

confiscatory, and that notwithstanding the matter has been repeatedly called to the attention of the Corporation Commission of the State of Oklahoma and the various members thereof the said Corporation Commission has not given any relief in the matter up to the present time and has not even set for hearing the applications made by your petitioners and each of them for a valuation of its properties and the fixing of adequate rates, and which said applications were filed with the said Corporation Commission on the 30th day of June, 1921.

19 Your complainants and each of them further allege that in the year 1920, they and each of them filed with the Corporation Commission an application asking for a valuation of its various distributing plants used and useful in serving cities and towns herein referred to and the inhabitants thereof, with natural gas, and asking that adequate and proper rates be fixed and that these applications, after repeated hearings, and many continuances against the protest of your complainants and each of them, was finally heard and closed by the Corporation Commission January 8th, 1921, but that up to the present time the said Corporation Commission has not acted upon said applications, has not fixed a valuation, and has not given to your complainants or either of them the relief sought or any relief whatsoever as prayed for in said applications.

Your complainants and each of them state that there never has been a valuation by the Corporation Commission of the State of Oklahoma of the property devoted to the public use in distributing natural gas in the cities and towns herein referred to and your complainants and each of them further state that at no time since they first began to distribute natural gas in the cities and towns herein referred to, have they received a reasonable and adequate return on the property devoted by them and each of them to the public use in distributing natural gas to the cities and towns herein referred to, and the inhabitants thereof, and your complainants and each  
20 of them, allege that at the present time they are not in a position to have the last Order of the Corporation Commission, fixing rates for natural gas in the cities and towns herein referred to, reviewed by the Supreme Court of the State, for the reason that there has not been a hearing upon the application made by your petitioners, and each of them, for the fixing of permanent gas rates and consequently there is no record upon which the Supreme Court of the State could pass upon the sufficiency or insufficiency of the rates fixed by the Corporation Commission of the State of Oklahoma.

Your complainant, the Oklahoma Gas and Electric Company, states that the value of its gas distribution plants in the City of Oklahoma City and the towns of Bethany, Britton and Yukon, which latter towns are included in the Oklahoma City Division, without any allowances for Working Capital, Going Value, Cost of Money or other proper intangibles, on September 30, 1920 was \$3,191,-968.00 and that the value of its gas distribution plant in the City of Enid, without any allowance for Going Value, Working Capital, Cost of Money or other proper intangibles, as of September 30, 1920

was \$747,038.00; and that the value of its gas distribution plant in the City of El Reno without any allowance for Working Capital, Going Value, Cost of Money or other proper intangibles, as of September 30, 1920 was \$415,966.00.

Your complainant, the Muskogee Gas and Electric Company, states that the value of its gas distribution plant in the City of Muskogee, Oklahoma, on the 30th day of September, 1920, without any allowance for Working Capital, Going Concern Value, Cost of Money or other intangibles, was \$1,386,087.00.

Your complainant, the Oklahoma Gas and Electric Company, alleges that the value of its gas distribution plant in the City of Oklahoma City and the towns of Yukon, Britton and Bethany, which towns are included in the Oklahoma City Division, on September 30, 1921, exclusive of any allowance for Working Capital, Going Concern Value, Cost of Money or other intangibles, was \$3,292,640.00; and that the value of its distribution system in the City of Enid on September 30, 1921, exclusive of Working Capital, Going Concern Value, Cost of Money or other intangibles, was \$770,742.00; and that the value of the distribution system in the City of El Reno on September 30, 1921, exclusive of Working Capital, Going Concern Value, Cost of Money and other intangibles, was \$419,835.00.

Your complainant, the Muskogee Gas and Electric Company, states that the value of its distribution plant in the City of Muskogee on September 30, 1921, exclusive of Working Capital, Going Concern Value, Cost of Money and other intangibles was \$1,411,299.00.

Your complainant, and each of them, allege that the values hereinabove given, are and were the values of the property used and useful in distributing natural gas in the cities and towns hereinabove referred to, and that said hereinabove mentioned values were based on the then prevailing prices for property, material and labor used in the construction of said distribution plants and that no depreciation has been deducted from said valuations.

Your complainants, and each of them, allege that the value of the said distribution plants, after deducting depreciation as of September 30, 1920, was as follows:

Oklahoma City.....	\$2,335,964
Muskogee .....	1,062,304
Enid .....	531,929
El Reno.....	316,391

22 and your complainants, and each of them, allege that the value of said distribution plants after deducting depreciation as of September 30, 1921, was as follows:

Oklahoma City.....	\$2,436,636
Muskogee .....	1,087,516
Enid .....	555,633
El Reno .....	320,200

Your complainants, and each of them allege that the value of the various distribution plants herein referred to, based on average prices for a period of 5 years, of material, property and labor used in constructing such distribution plants, as of September 30, 1920, before deducting depreciation, was as follows:

Oklahoma City.....	\$2,578,856
Muskogee .....	1,116,813
Enid .....	598,462
El Reno.....	366,224

and that after deducting depreciation from said 5 year average valuation, the value of the several distribution plants herein referred to, was as follows:

Oklahoma City.....	\$1,892,349
Muskogee .....	857,244
Enid .....	426,318
El Reno.....	279,353

Your complainants, and each of them allege that applying a 5 year average price for labor, material and property included in the distribution plants hereinabove referred to of September 30, 1921, the values of said various distribution plants was as follows:

Oklahoma City.....	\$2,679,528
Muskogee .....	1,142,025
Enid .....	622,166
El Reno .....	370,093

23 and that after deducting depreciation from the last mentioned values, as of September 30, 1921, the values of the various distribution plants hereinabove referred to, was as follows:

Oklahoma City.....	\$1,993,021
Muskogee .....	882,456
Enid .....	450,022
El Reno.....	283,222

Your complainants, and each of them, allege that all of the values hereinabove given are based on physical property only and do not include in any case Working Capital, Going Concern Value, Cost of Money or any other intangibles; and your complainants, and each of them, allege that a proper allowance for Working Capital, Going Concern Value, Cost of Money and other intangibles to be added to the values hereinabove set out, would be as follows for each of the distribution systems hereinabove referred to:

Oklahoma City.....	\$1,390,368
Muskogee .....	614,788
Enid .....	227,483
El Reno.....	122,194

all of which said items should be added to and considered in arriving at the present value of the complainants' property, used and useful in distributing natural gas in the cities and towns hereinbefore referred to.

Your complainants allege and state that the cost of gas for the year commencing October 1st, 1919, ending September 30th, 1920, in the city of Oklahoma City and the towns of Bethany, Britton and Yukon was \$1,116,063.91, and that its Operating Expenses, other than the cost of gas, for the same period of time were \$238,980.16, and that its Total Receipts for the same period of time were \$1,619,792.25, leaving Net Earnings of \$264,748.18 to be applied towards return on the value of the property used and useful in distributing natural gas in said city and towns, and depreciation and amortization of its said distribution system.

24 Your complainants further allege and state that the cost of gas for the year commencing October 1st, 1919, and ending September 30th, 1920, in the City of El Reno, was \$92,351.45, and that its Operating Expenses, other than the cost of gas, for the same period of time, were \$29,991.63, and that its Total Receipts for the same period of time were \$136,199.63, leaving Net Earnings of \$13,856.55 to be applied towards a return on the value of the property used and useful in distributing natural gas in said city and depreciation and amortization on its said distribution system.

Your complainants further allege and state that the cost of gas for the year commencing October 1st, 1919, and ending September 30th, 1920, in the City of Enid, was \$197,649.51 and that its Operating Expenses, other than the cost of gas, for the same period of time were \$50,418.30 and that its Total Receipts for the same period of time were \$284,909.74, leaving Net Earnings of \$36,841.93 to be applied towards a return on the value of the property used and useful in distributing natural gas in said city and depreciation and amortization on its said distribution system.

Your complainants further allege and state that the cost of gas for the year commencing October 1st, 1919, and ending September 30th, 1920, in the City of Muskogee, was \$379,306.29 and that its Operating Expenses, other than the cost of gas, for the same period of time, were \$107,209.09 and that its Total Receipts for the same period of time were \$590,003.86, leaving Net Earnings of \$103,488.48, to be applied towards a return on the value of the property used and useful in distributing natural gas in said city and depreciation and amortization on its said distribution system.

25 Your complainants further allege and state that since September 30th, 1920, up to and including September 30th, 1921, it added to its distribution system in the City of Oklahoma City, and the Towns of Bethany, Britton and Yukon, property to the value of \$102,226.54, and that in the same period of time it added to its distribution system in the City of El Reno, property to the value of \$3,967.72, and that in the same period of time it added to its distribution system in the City of Enid, property of the value of \$27,730.87 and that for the same period of time it added to its

distribution system in the City of Muskogee, property of the value of \$30,966.79.

Your complainants and each of them allege that for the year ending September 30th, 1921, the cost of gas in the City of Oklahoma City and the Towns of Bethany, Britton and Yukon was \$963,722.79, and that its Operating Expenses other than the cost of gas, for the same period of time, were \$235,971.35, and that its Total Receipts for the same period of time were \$1,412,650.50, leaving Net Earnings of \$212,906.36 to be applied towards a return on the value of the property used and useful in distributing natural gas in said city and towns, and depreciation and amortization on its said distribution system.

Your complainants and each of them allege that for the year ending September 30th, 1921, the cost of gas in the City of El Reno, was \$72,423.30, and that its Operating Expenses, other than the cost of gas, for the same period of time, were \$34,876.99, and that its Total Receipts for the same period of time were \$108,101.38, leaving Net Earnings of \$881.09 to be applied towards a return on the value of the property used and useful in distributing natural gas in said city, and depreciation and amortization on its said distribution system.

26 Your complainants and each of them allege that for the year ending September 30th, 1921, the cost of gas in the City of Enid, was \$160,874.26, and that its Operating Expenses, other than the cost of gas, for the same period of time, were \$58,260.65, and that its Total Receipts for the same period of time were \$235,455.77, leaving Net Earnings of \$16,320.86, to be applied towards a return on the value of the property used and useful in distributing natural gas in said city, and depreciation and amortization on its said distribution system.

Your complainants and each of them allege that for the year ending September 30th, 1921, the cost of gas in the City of Muskogee, was \$322,425.10, and that its Operating Expenses, other than the cost of gas, for the same period of time, were \$118,652.74, and that its Total Receipts for the same period of time, were \$489,913.80, leaving Net Earnings of \$48,835.96, to be applied towards a return on the value of the property used and useful in distributing natural gas in said city, and depreciation and amortization on its said distribution system.

Your complainants and each of them state that since Order No. 1886 promulgated by the Corporation Commission on June 25th, 1921, as herein stated, the cost of gas to them and each of them has been materially increased, and as the winter months are at hand and the consumption of gas is rapidly increasing, the cost to your complainants and each of them, because of said order, will likewise rapidly increase.

Your complainants and each of them state that the cost of gas under the contracts abrogated by the Corporation Commission under its said Order, for the month of July, 1921, in each of the towns and cities herein referred to, was, as follows:

27	Oklahoma City .....	\$27,855.45
	El Reno .....	2,261.19
	Enid .....	4,282.68
	Muskogee .....	11,856.12

And your complainants state that if settlement had been made for said gas for the month of July, 1921, under the Order of the Commission herein referred to, the cost of gas in each of the cities and towns herein referred to, would have been, as follows:

Oklahoma City .....	\$34,127.50
El Reno .....	4,233.75
Enid .....	5,502.75
Muskogee .....	18,144.50

Your Complainants and each of them state that for the month of August, 1921, the cost of gas under the contracts hereinbefore referred to, was as follows:

Oklahoma City .....	\$25,748.06
El Reno .....	2,445.36
Enid .....	4,917.14
Muskogee .....	11,245.64

and that had settlement been made under the Order of the Corporation Commission hereinbefore referred to, the cost of gas for the month of August, 1921, to your complainants and each of them, would have been as follows:

Oklahoma City .....	\$32,433.50
El Reno .....	4,180.75
Enid .....	5,429.00
Muskogee .....	17,730.50

28 Your complainants further state that the cost of gas under the contracts hereinbefore referred to, for the month of September, 1921, in each of the towns and cities herein referred to, was as follows:

Oklahoma City .....	\$25,444.28
El Reno .....	2,635.18
Enid .....	4,099.50
Muskogee .....	10,140.04

and your complainants further allege that had settlement been made under the Order of the Corporation Commission hereinbefore referred to, the cost of gas in each of the cities and towns herein referred to, for the month of September, 1921, would have been as follows:

Oklahoma City ..	\$33,810.75
El Reno .....	4,310.50
Enid .....	5,733.25
Muskogee .....	17,000.75

Your complainants and each of them further allege that as the volume of gas consumption increases due to cold weather conditions, the discrepancy in the cost of gas under the said contracts and under the Order of the Corporation Commission, will each month become greater, and that in addition thereto the losses which your complainants and each of them will sustain in collections, and which has not heretofore been borne by them, will further reduce the net earnings of your complainants and each of them.

Your complainants and each of them allege that the amounts paid by them for gas during the years above enumerated was not excessive, but that inasmuch as the cost of gas had been increased to them, and each of them, under the said order of the

29 Corporation Commission, the earnings of the complainants and each of them, under the rates now in existence available for return on the reasonable value of the property used and useful in distributing natural gas in the cities and towns hereinbefore referred to, and available for depreciation and amortization, will, to all intents and purposes have been reduced to a point where not even enough will be remaining to take care of the ordinary depreciation on the property used and useful in distributing natural gas in the cities and towns hereinbefore enumerated.

Your complainants and each of them allege that the Oklahoma Natural Gas Company, from whom your complainants are compelled to purchase gas because the gas owned by the said Oklahoma Natural Gas Company, and the transmission system owned by the Oklahoma Natural Gas Company is the only gas transmission system available for the purpose of supplying gas to your complainants for distribution in the towns and cities hereinbefore enumerated, has filed its bill in this court seeking an injunction, against the so-called gate rate in effect under Order No. 1886 promulgated by the Corporation Commission of Oklahoma, on the ground that the same is inadequate and confiscatory, and your complainants and each of them allege that if the said Oklahoma Natural Gas Company is successful in its application for relief to this Court, the cost of gas to your complainants will be still further increased, so that the expense of distributing natural gas in the towns and cities herein enumerated will reach a point where there will be no return whatsoever to your complainants and each of them for gas distributed by them in the towns and cities herein enumerated.

30 Your complainants and each of them allege that under the contracts existing between your complainants and the Oklahoma Natural Gas Company, which said contracts were abrogated by the order of the Corporation Commission of Oklahoma, hereinbefore referred to, they received one-fourth ( $\frac{1}{4}$ ) of the gross receipts from all gas sold for industrial purposes, or, in other words, received  $6\frac{1}{4}$ ¢ per 1,000 cubic feet for all gas sold to industries in the Cities of Oklahoma City, El Reno, Enid and the Towns of Britton, Bethany, and Yukon, and this without any additional cost of operation or investment to your complainants, and they received in the City of Muskogee, one-third ( $\frac{1}{3}$ ) of the gross receipts from all gas

sold to industrial concerns, or, in other words, 8½¢ per 1,000 cubic feet on each foot of gas sold to industrials in the City of Muskogee; and your complainants allege that under Order No. 1886, promulgated by the Corporation Commission of the State of Oklahoma, canceling said contracts and the orders of the Corporation Commission, fixing rates to consumers in cities and towns hereinbefore referred to, your complainants and each of them are absolutely deprived of any revenue from gas sold to industrial consumers, for the reason that under the said Order No. 1886 your complainants are compelled to pay to the Oklahoma Natural Gas Company, when unaccounted for gas and loss in collections are taken into consideration, a price which exceeds the sum of twenty-five (25¢) cents per 1,000 cubic feet and under the orders of the Corporation Commission fixing the rates to consumers in the cities and towns hereinbefore referred to, the rates for industrial consumers are fixed at 25¢ per 1,000 cubic feet so that the cost of gas under said Order No. 1886 to your complainants and each of them is in excess of the price at which your

complainants and each of them are authorized to sell the same  
 31 for industrial purposes in the cities and towns hereinbefore enumerated, thereby causing a loss to your complainants and each of them in the sale and distribution of gas for industrial purposes, and depriving your complainants and each of them of the revenues which they and each of them heretofore enjoyed under the said contracts.

Your complainants and each of them allege that had the so-called gate rate under the Commission's Order No. 1886 been in force and effect for the twelve months' period beginning October 1, 1920 and ending with September 30, 1921, and had the present rates to consumers, namely: 42¢ in the City of Oklahoma City and the Towns of Bethany, Britton and Yukon, and 45¢ in the Cities of Enid, El Reno and Muskogee been in effect for the same period of time, your complainants and each of them would have had only \$24,828.00 available for depreciation, amortization and return on the property used and useful in distributing natural gas in the City of Oklahoma City and the Towns of Britton, Bethany and Yukon, and it would have had only \$5,537.00 in the City of Enid and would have had \$9,261.00 less than nothing in the City of Muskogee and \$10,639.00 less than nothing in the City of El Reno available for depreciation, amortization and return on the property used and useful in distributing natural gas in said cities.

Your complainants and each of them, allege that if the same volume of business could be retained for the next twelve months as was done for the twelve months' period ending with September 30, 1921, they and each of them, under the said Order No. 1886, of the Corporation Commission, and the rates now in effect, they and each of them would  
 32 have available for depreciation, amortization and return on the property used and useful in distributing natural gas in the cities and towns hereinbefore referred to, as a result of said twelve months' period of operation under the said Order No. 1886 and the present rate schedules, the following amounts:

In Oklahoma City.....	\$24,838
In Enid.....	5,537
In Muskogee, a deficit of.....	9,261
In El Reno, a deficit of.....	10,638

In other words, your complainants allege that for the year's operation the gross receipts from the sale of gas in Oklahoma City would exceed the cost of gas and operating expenses in the sum of \$24,838.00, and in the City of Enid, the gross receipts from the sale of gas would exceed the cost of gas and other operating expenses in the sum of \$5,537.00 and in the City of Muskogee, the operating expenses and cost of gas would exceed the gross receipts from the sale of gas, in the sum of \$9,261.00, and in the City of El Reno the operating expenses and cost of gas would exceed the gross receipts from the sale of gas in the sum of \$10,638.00.

Your complainants and each of them allege that they are prevented and intimidated from putting into effect reasonable rate schedules in the cities and towns hereinbefore referred to, and supplied by them and each of them with natural gas, because of the highly excessive and unusually severe penalties provided by Section No. 1192, Revised Laws 1910 of the State of Oklahoma.

Because of the constraint and intimidation of said unusual penalties, these complainants have been forced to keep in effect the schedules prescribed by said Corporation Commission of the State of Oklahoma from time to time, and the fines and penalties provided for failure to conform to said orders are so unusual and enormous as to force upon the complainants an abandonment of their right to act independently of said void and illegal orders, and by virtue of such fact said orders of said Corporation Commission are void and unconstitutional as depriving the complainants of their property without due process of law in contravention of the Fourteenth Amendment of the Constitution of the United States. In this connection complainants allege that the penalties provided for the failure to conform to said order of the said Corporation Commission are so unusual, oppressive and unreasonable that the complainants are thereby precluded from the privilege of asserting their rights independently and challenging in the courts the validity of said orders, except at the risk and with the chance of becoming subject to the unusual and excessive penalties aforementioned, as the result of which situation the complainants are denied the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States.

Adequate relief at law from this situation is not available to complainants and complainants' resources and efforts would be absorbed in unnecessary and highly burdensome litigation, because of which facts the complainants' properties would be needlessly appropriated without due process of law.

That by reason and virtue of all of said facts and the acts of the said Corporation Commission of the State of Oklahoma and the penalty statute of the said State provided in connection with the changes and charges not made with the consent and approval of

said Corporation Commission, these complainants are deprived of their property without due process of law and are compelled to furnish and distribute gas to consumers in the cities and towns aforementioned for less than the actual cost of said services, and therefore at an actual loss for each and every cubic foot of gas so supplied and delivered.

34 Complaining of the defendants, City of Oklahoma City and its attorney, C. H. Ruth, the City of Muskogee and its attorney, W. P. McGinnis, the City of Enid and its attorney, F. W. Herndon, and the City of El Reno and its attorney, M. B. Cope, complainants allege and state that said above named cities and their respective city attorneys and each of them are threatening to institute civil actions against your complainants for the purpose of preventing them from putting into force and effect any rate or charge for gas in excess of the rates now existing and heretofore prescribed by the Corporation Commission of the State of Oklahoma, which said rates are in this bill complained of by your complainants as being confiscatory, and for the purpose of hindering, injuring and delaying complainants in obtaining and enforcing the relief which complainants are entitled to under the facts alleged in this bill, and which is sought by this action.

Complainants are without adequate remedy at law in the premises hereinbefore set forth and will suffer irreparable injury unless accorded the injunctive relief herein prayed for.

Complainants respectfully show to the court that said orders of the Corporation Commission of the State of Oklahoma entered on the 25th day of June, 1921, and the 1st day of July, 1921, being Orders No. 1886, No. 1889, and No. 1890, all promulgated by the Corporation Commission of the State of Oklahoma, are void for the following reasons:

1st. Because the penalties provided for the infraction thereof are so enormous as to intimidate these complainants and to force an abandonment of all rights to act independently thereof, and said order and act are, therefore, unconstitutional as depriving these complainants of property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

35 2nd. Because said order and schedule fixing rates are so unreasonably low as to be non-compensatory, unremunerative and confiscatory, thereby depriving these complainants of property without due process of law in contravention of Section 1 of the fourteenth Amendment to the Constitution of the United States.

Wherefore, since complainants are without adequate remedy save in a court of equity, complainants pray:

1st. That the defendants, the Corporation Commission of the State of Oklahoma, Campbell Russell, Art. L. Walker and E. R. Hughes, constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of

Oklahoma, their assistants, agents and employes, and all persons acting through or under them, be restrained and enjoined from the enforcement of their orders of the 1st day of July, 1921, known as Orders No. 1889 and 1890, which orders established a forty-two cent rate in the City of Oklahoma City and the towns of Bethany, Britton and Yukon, and a forty-five cent rate in the Cities of El Reno, Enid and Muskogee, and that the defendants, their assistants, agents and employes, and all persons acting through or under them, be further restrained and enjoined from imposing any penalties upon the complainants or their property under or with respect to said orders.

2nd. That the defendants, the City of Oklahoma City and its attorney, C. H. Ruth, the City of Muskogee and its attorney, W. P. McGinnis, the City of Enid and its attorney, F. W. Herndon, the City of El Reno and its attorney, M. B. Cope, be restrained and enjoined from instituting any action seeking to affect the rates to be charged by these complainants or any action that will hinder, injure or delay them in obtaining the relief to which they are entitled under the facts herein set forth.

36 3rd. That this court set this cause for hearing on application for interlocutory injunction on the — day of —, 1921, and that on said hearing the court issue its injunction, preliminary until final hearing and perpetual thereafter in accordance with said restraining order.

4th. That on said final hearing that said preliminary injunction be made perpetual, as aforesaid.

5th. That the complainants may have such other and further relief as may be just, and equitable and necessary.

6th. And said complainants further pray that there shall be issued out of this court, directed to the Marshal, a writ of subpoena, to be served upon the defendants, directing them upon a certain day and under certain pain to be and appear before this Honorable Court, then and there true, direct and perfect answer to make to the premises, but not under oath, answer under oath to be expressly waived; and further, to stand to, abide and perform such other and further direction as may be conformable to equity and good conscience, as to this court shall seem meet.

And your complainants will ever pray.

JOHN H. ROEMER,  
D. T. FLYNN,  
R. M. CAMPBELL,  
ROBERT M. RAINEY,  
STREETER B. FLYNN,  
PAUL REISS,  
*Attorneys for Complainants.*

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

W. R. Emerson, makes solemn oath and says: I am Secretary and Treasurer of the complainants, the Oklahoma Gas and Electric Company, and the Muskogee Gas and Electric Company; that I have read the foregoing First Amended Bill of Complaint and that the matters and things therein stated are true; that the reason this complaint is not verified by the complainants is that they are corporations and that I am the Secretary and Treasurer of said corporations and am verifying this complaint for and in their behalf; that all matters therein stated are based on my personal knowledge of the affairs of each of said complainants and are true and correct.

W. R. EMERSON.

37       Subscribed and sworn to before me this 20th day of December, 1921.

[SEAL.]

A. H. MAHNER,  
*Notary Public.*

My Commission Expires March 3, 1925.

Endorsed: #502—Eq. Oklahoma Gas & Electric Company, et al. vs. Corporation Commission of the State of Oklahoma, et al. First Amended Bill of Complaint. Filed December 20, 1921. Arnold C. Dolde, Clerk, by Theodore M. Filson, Deputy. Rainey and Flynn, Attorneys & Counsellors, American National Bank Building, Oklahoma City.

38       In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY et al., Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Defendants.

*Order.*

On this 20th day of December, 1921, come the plaintiffs and present their motion to the court, praying for a temporary injunction in said cause as set forth in the plaintiffs' amended bill herein. And it is thereupon ordered that said motion be set down for hearing at Oklahoma City on the third day of January, 1922 at 10 o'clock A. M., at which time defendants and each of them are cited to appear and show cause why said temporary injunction should not be granted.

It is further ordered that service hereof shall be made by copy, together with a copy of said amended bill, and that the said copy of this order and said amended bill be served upon the Governor of the State of Oklahoma and the Attorney General of said State five days before the date of said hearing.

JOHN H. COTTERAL,  
*District Judge.*

Endorsed: Filed in District Court on December 20, 1921. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

39 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY et al., Complainants,

vs.

CORPORATION COMMISSION et al., Defendants.

On this 26th day of January, 1922, it is ordered that plaintiff have leave to file supplemental bill herein, instanter.

40 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE Gas & Electric Company, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Supplemental Bill of Complaint.*

Come now complainants, the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company, in the above entitled cause and file this their supplemental bill therein, and refer to their first amended bill of complaint filed in said cause and incorporate the same by reference as fully as though said amended bill of complaint were set out in full herein, and further respectfully show to the court:

That on the 17th day of December, 1921, complainants herein filed in the Supreme Court of the State of Oklahoma, their applications for supersedeas in causes No. 12918 and No. 12919, in which they prayed that the said orders No. 1889 and No. 1890, of  
41 the Corporation Commission be superseded pending the appeals to the Supreme Court of Oklahoma, and that these complainants be allowed, pending said appeals, to charge the schedule of rates therein specified, a copy of which said applications for supersedeas are hereto attached, marked Exhibit A and B and referred to as a part of this supplemental bill.

That said applications came on for hearing before the Supreme Court on the 17th day of December, 1921, at which time said Supreme Court entered its orders finding that conditions had materially changed and that the interest of justice required that said causes be remanded to the Commission to be further investigated and reported upon to the Supreme Court, and directing that said investigation should be had before the Corporation Commission, and that the said Commission report its findings and conclusions in each of said causes to the Supreme Court within fifteen days from said date, and that in the meantime further action on the supersedeas applications be continued, a copy of which said orders are hereto attached, marked Exhibit C and D and made a part of this supplemental bill.

Complainants allege that pursuant to the orders of the Supreme Court the defendants, Corporation Commission of the State of Oklahoma, set said causes for hearing on the 30th day of December, 1921, and that said hearings were commenced on said date and concluded on the 31st day of December, 1921, at which time the Commission announced that it would take said causes under consideration and file its orders within a few days thereafter.

That on the 3rd day of January, 1922, said Corporation Commission secured from the Supreme Court of Oklahoma an order extending the time theretofore granted by the Supreme Court in which to file said reports in said Supreme Court to January 18, 1922.

Complainants say that on the 21st day of January, 1922, the Corporation Commission filed its findings of fact, opinion and order  
42 fixing the gas rate in the Oklahoma City division, consisting of the City of Oklahoma City and the towns of Bethany, Britton, Putnam City and Yukon, a copy of which said findings and order of the Corporation Commission is hereto attached, marked Exhibit E, and made a part hereof.

Complainants further show to the court that on the 23rd day of January, 1922, the Supreme Court of the State of Oklahoma gave the Commission a further extension of time until January 31st, 1922, in which to file its findings and conclusions as to the other cities and towns affected by said investigation and the orders of the Supreme Court.

Complainants further say that in the order above referred to filed in the Supreme Court on the 21st day of January, 1922, that the rates authorized by said Corporation Commission for gas in the City of Oklahoma City and the towns of Bethany, Britton, Yukon and Putnam City were fixed at forty-five (45¢) cents per thousand

cubic feet for gas used for domestic purposes and at twenty-five (25¢) cents for gas used for industrial purposes, with the proviso that the first five hundred thousand (500,000) cubic feet of gas should be sold at the domestic rate; and it was further provided therein that so long as a city gate rate of thirty-five (35¢) cents per thousand cubic feet is imposed upon the Oklahoma Gas & Electric Company by authority of the United States District Court or other Federal Court, thirteen cents per thousand cubic feet may be collected from domestic patrons of said Company in addition to the domestic rate herein prescribed, subject to refund as per previous order and bond.

Complainants further say that by said order said Commission deprives the complainant, Oklahoma Gas & Electric Company, of any return whatever on a large part of its property, and that the rates for gas now in force in said cities and towns are so unreasonably low as to be non-compensatory, unremunerative and confiscatory, thereby depriving these complainants of property without due process of law and denying them the equal protection of the laws in contra-  
43 vention of the 14th Amendment to the Constitution of the United States.

Complainant, The Oklahoma Gas and Electric Company, states that on the 24th day of January, 1922, it renewed its application to the Supreme Court of the State of Oklahoma for an order superseding the rates then in force and that said application was denied; a copy of the order denying said application is hereto attached, made a part hereof and marked Exhibit "F."

Wherefore, complainants repeat the prayer of their original bill for a temporary and permanent injunction, and pray the court for a temporary order enjoining and restraining the defendants in this cause and each of them from in any wise enforcing the schedule of rates now in effect in Oklahoma City, Britton, Bethany, Yukon, Putnam City, Enid, El Reno and Muskogee, and from interfering with the complainants in their right to establish other higher and different rates in said cities and towns, and restraining and enjoining the defendants from taking any proceedings before any tribunal in the State of Oklahoma seeking in any wise to enforce said rates or to interfere with complainants in their right to install and collect from their consumers other and different rates, and complainants offer to submit to such conditions as the court may impose upon the granting of said temporary injunction.

ROBERT M. RAINEY,  
STREETER B. FLYNN,  
*Attorneys for Complainants.*

44 STATE OF OKLAHOMA,  
*County of Oklahoma, ss:*

W. R. Emerson, makes solemn oath and says: I am Secretary and Treasurer of the complainant, the Oklahoma Gas and Electric Company, and also Secretary and Treasurer of the complainant, the Muskogee Gas and Electric Company; that I have read the foregoing

supplemental bill of complaint and that the matters and things therein stated are true; that the reason this complaint is not verified by the complainants is that they are corporations and that I am the Secretary and Treasurer of said corporations and am verifying this complaint for and in their behalf; that all matters therein stated are based on my personal knowledge of the affairs of said complainants and are true and correct.

W. R. EMERSON.

Subscribed and sworn to before me this 25th day of January, 1922.

[SEAL.]

G. H. MAHNER,  
*Notary Public, Oklahoma County, Oklahoma.*

My commission expires March 3rd, 1925.

45

"EXHIBIT A."

In the Supreme Court of the State of Oklahoma.

No. 12918.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, Appellant,

VS.

THE STATE OF OKLAHOMA and THE CORPORATION COMMISSION OF  
THE STATE OF OKLAHOMA, Appellees.

*Application for Supersedeas.*

Comes now the Oklahoma Gas and Electric Company, a corporation organized under the laws of the State of Oklahoma, appellant herein, and respectfully shows to the Court that on the 29th day of June, 1921, it filed an application with the Corporation Commission praying for an increase in its gas rates wherein it set forth that the then existing schedule of gas rates theretofore prescribed by the Corporation Commission, and charged by your appellant, was wholly inadequate and did not afford it a fair and adequate return upon the value of its property used and useful in discharging its duties in furnishing gas to the public; a copy of which said application is hereto attached, marked "Exhibit A," and made a part hereof. Appellant prayed that the Corporation Commission make an order allowing it to charge a rate to domestic consumers as follows:

Oklahoma City, 60 cents per thousand cubic feet;  
El Reno, 88 cents per thousand cubic feet;  
Enid, 65 cents per thousand cubic feet.

On July 1st, 1921, the Commission entered its order, being Order No. 1889, denying appellant's application, but allowed it a temporary

46 increase of 2 cents per thousand cubic feet in Oklahoma City, and 5 cents per thousand cubic feet in Enid, and El Reno.

Appellant respectfully shows to this Court that it has appealed from said Order No. 1889 of the Corporation Commission, to this Court, and said appeal has been allowed, and that it also has applied to the said Corporation Commission to supersede said Order, which application the Corporation Commission has denied.

Appellant further shows to the court that the property used and useful in delivering natural gas to its consumers in the cities and towns of Oklahoma City, Enid, and El Reno, is not less than the following, to wit:

In the City of Oklahoma City.....	\$3,269,828.00
In the City of El Reno.....	425,835.00
In the City of Enid.....	750,678.00

Appellant further shows to this Court that the Corporation Commission of the State of Oklahoma has never fixed a valuation of its property used and useful in its said business of furnishing gas to the public, though your appellant has had on file a petition praying for said valuation for more than one year, and on which application the Commission held repeated hearings, and finally closed the matter of hearings on the same, on January 8th, 1921, but since which time the Commission has not made any finding whatsoever as to said valuation.

Your appellant further shows to the Court that said Order No. 1889 was made by the Corporation Commission without a hearing, and without any investigation as to the merits of appellant's application for increased rates, and that it has never granted appellant a hearing on the said application filed on the 29th day of June, 1921.

47 Appellant alleges that the rates it is allowed to charge under said Order No. 1889 of the said Corporation Commission are wholly unremunerative and do not give it a fair return on the value of its property used and useful in its said business, and that the said Order fixing the said rates is therefore confiscatory, and takes appellant's property without due process of law, contrary to the Constitution of this State, and the Constitution of the United States.

Your appellant further shows that it purchases the gas which it distributes in the cities and towns above named, from the Oklahoma Natural Gas Company, under Order No. 1886 of the Corporation Commission, known as the Gate-rate Order, by which order appellant is required to pay said Oklahoma Natural Gas Company the sum of 25 cents per thousand cubic feet for the first five hundred thousand cubic feet of gas sold to each consumer, and so purchased by it from the Oklahoma Natural Gas Company, and 20 cents per thousand cubic feet for all gas purchased by it from said Oklahoma Natural Gas Company and sold to each consumer in excess of said first five hundred thousand cubic feet.

Your appellant further shows that the cost of gas under said Gate-rate Order, since July 1st, 1921, to September 30th, 1921, is as follows:

	July.	August.	September.
Oklahoma City Division, Including Oklahoma City, Britton, Bethany, and Yukon .....	\$34,127.50	\$32,433.50	\$33,810.75
El Reno.....	4,233.75	4,180.75	4,310.50
Enid .....	5,502.75	5,429.00	5,733.25

and that the cost of gas, as above stated, is largely in excess of the cost of gas under the contracts existing between the Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Company prior to the issuance of said Order No. 1886 by the Corporation Commission cancelling said contracts and substituting therefor the said gate rate.

Your appellant alleges that had the so-called gate rate under the Corporation Commission's Order No. 1886 been in force and effect for the twelve months beginning October 1st, 1920, and ending September 30th, 1921, and had the present rates to consumers in Oklahoma City, Britton, Bethany and Yukon been in effect for the same period of time, your appellant would have had only \$24,838.00 available for depreciation, amortization and return on the property used and useful in distributing gas in the said City of Oklahoma City, and the towns of Britton, Bethany and Yukon, and your appellant would have had only \$5,537.00 available for depreciation, amortization and return on the property used and useful in distributing gas in the city of Enid, and would have had \$10,639.00 less than nothing for available for depreciation, amortization and return on the property used and useful in distributing natural gas in the city of El Reno.

Your appellant alleges that if the same volume of business could be retained for the next twelve months as was done during the twelve months period ending September 30th, 1921, under Order No. 1886 of the Corporation Commission and the rates now in force and effect, it would have available for depreciation, amortization and return on the property used and useful in distributing natural gas in the cities and towns hereinabove referred to as a result of said twelve month period of operations, the following amounts:

Oklahoma City Division, including Oklahoma City, Britton, Bethany and Yukon.....	\$24,838.00
Enid .....	5,537.00

El Reno, a deficit of \$10,638.00.

49 In other words, appellant alleges that for the year's operation the gross receipts for the sale of gas in the Oklahoma City Division would exceed the cost of gas and operating expenses in the sum of \$24,838.00, and in the Enid division would exceed the cost of gas and operating expenses in the sum of \$5,537.00, and in the City of El Reno, the operating expenses and cost of gas would exceed the gross receipts from the sale of gas in the sum of \$10,638.00.

Your appellant further shows to the Court that the Oklahoma Natural Gas Company did, on the 16th day of December, 1921, obtain from the United States District Court for the Western District of Oklahoma, a temporary restraining order, enjoining the said Order No. 1886 of the Corporation Commission, and has, or will immediately, place in effect a gate rate of not less than 35 cents per thousand cubic feet of gas, which will greatly increase the cost of gas to this appellant and thereby greatly diminish its revenues and render the rates that it is now permitted to charge under the order of the Corporation Commission, still more inadequate and unremunerative and completely confiscatory, and your appellant alleges that it will therefore be necessary for this court to immediately put into effect the following schedule of rates to consumers in order to give appellant an adequate and fair return upon the value of its property used and useful in its business of furnishing gas in said cities and towns, to-wit:

Oklahoma City Division, including Oklahoma City, Britton, Bethany and Yukon.	The first 500 M cubic feet per month, 75¢ per M cubic feet, net; Excess of 500 M cubic feet per month, 25¢ per M cubic feet, net.
Enid .....	The first 500 M cubic feet per month, 80¢ per M cubic feet, net; Excess of 500 M cubic feet per month, 25¢ per M cubic feet, net.
50 El Reno.....	The first 500 M cubic feet per month, 80¢ per M cubic feet, net; Excess of 500 M cubic feet per month, 25¢ per M cubic feet, net.

Your appellant further shows to this Court that this cause cannot be prepared, submitted to and decided by this court for several months, and pending a decision by this court your appellant is being subjected to a confiscation of its property in violation of the Constitution of this state and the Constitution of the United States, and unless it is granted a supersedeas herein and permitted to charge the rates prayed for herein, it will suffer great and irreparable damage.

Wherefore, pending this appeal, appellant prays this Court to supersede said order of the Corporation Commission and to allow it to charge the schedule of rates applied for herein, and hereby offers to comply with such terms as may be imposed by this court, including the giving of a bond in such sum as may be fixed by this court, conditioned that it will refund to its customers the difference between the rates charges and collected by it and the rates which may be fixed by this court on appeal, and your appellant offers to keep its books

so as to give the necessary information on which to make any such refund, if it becomes necessary, and to comply with any and all other conditions prescribed by law or by this court.

OKLAHOMA GAS AND ELECTRIC  
COMPANY,

By ———, Attorney.

51 STATE OF OKLAHOMA,  
Oklahoma County, ss:

W. R. Emerson, being duly sworn, says that the facts stated in the foregoing application are true; that he is Treasurer for the Oklahoma Gas and Electric Company, and is making this affidavit from his own personal knowledge, and for and on behalf of the Oklahoma Gas and Electric Company.

Subscribed and sworn to before me this — day of December, 1921.

—————,  
Notary Public.

My Commission expires ———, ———.

52 To the Attorney General of the State of Oklahoma:

Please take notice that the foregoing application for supersedeas will be presented to the Supreme Court of the State of Oklahoma at nine o'clock A. M. on the 17th day of December, 1921, or as soon thereafter as counsel can be heard.

—————,  
Attorney for Appellant.

To the Corporation Commission of the State of Oklahoma:

Please take notice that the foregoing application for supersedeas will be presented to the Supreme Court of the State of Oklahoma at nine o'clock A. M. on the 17th day of December, 1921, or as soon thereafter as counsel can be heard.

—————,  
Attorney for Appellant.

Service of the foregoing notice and application and receipt of a copy thereof, is hereby acknowledged this 16th day of December, 1921.

—————,  
Attorney General of the State of Oklahoma.

Service of the foregoing notice and application and receipt of a copy thereof, is hereby acknowledged this 16th day of December, 1921.

CORPORATION COMMISSION OF  
THE STATE OF OKLAHOMA,

By ———.

53

Correct Copy.

## EXHIBIT A TO EXHIBIT "A."

Before the Corporation Commission of Oklahoma.

Cause No. 4302.

In the Matter of Gas Rates at OKLAHOMA CITY, EL RENO, ENID,  
YUKON, and BRITTON.*Amended Petition.*

Comes now the Oklahoma Gas & Electric Company, and for its amended petition in said cause, refusing to waive and expressly reserving to itself the right to appeal from Order No. 1886, in Cause No. 4023, and also reserving to itself any and all other legal or equitable remedies and rights it may have in connection with said Order No. 1886, in Cause No. 4023, states:

1st. That it is a public service corporation, and engaged in distributing natural gas in the cities and towns of Oklahoma City, El Reno, Enid, Yukon and Britton, and that in all of said towns it is, and was, acting under contracts with the Oklahoma Natural Gas Company, which are on file with this Commission, and which are hereby made a part of this petition the same as if they were set out in full herein.

2nd. That under said contracts, your petitioner herein receives as its compensation one third ( $\frac{1}{3}$ ) of the proceeds of all gas sold for domestic purposes, and one fourth ( $\frac{1}{4}$ ) of the proceeds of all gas sold for manufacturing purposes.

3rd. That this Commission, under an order dated June 25th, 1921, undertook to abrogate said contracts and change the relationship existing between the Oklahoma Natural Gas Company and this petitioner, and undertook to give to the Oklahoma Natural Gas Company a greater share of the receipts from the sale of natural gas in the cities and towns referred to in this petition, and also undertook to shift from the Oklahoma Natural Gas Company to the petitioner herein, the burden of paying for unaccounted for gas, and all losses in collection, all of which this petitioner claims is contrary to law and not justified by the facts and testimony as the same appear from the record in said cause No. 4023.

4th. That for many years your petitioner has been acting under said contracts without receiving an adequate return on the investment it was called upon to make under said contracts, and that the change now sought to be brought about in the relationship between the Oklahoma Natural Gas Company and your petitioner, compels this petitioner to ask for temporary relief pending a final valuation of its property and a final determination of the legal right of the

Commission to change said relations and the fixing of a permanent rate to the consumers of natural gas in the cities and towns herein mentioned.

5th. Your petitioner further states that it did, in the fall of 1920, submit to this Commission an inventory and appraisal of its property devoted to the public use in distributing natural gas in the cities and towns referred to herein, and that numerous public hearings were had on the same, and that said matter of valuation was finally closed and submitted to this Commission for decision on January 28th, 1921, but that up to the present time the Commission has not acted in said matter of valuation, and therefore this petitioner is not in a position to state what valuation should be used in fixing a rate to the consumer until said valuation has been finally fixed, and consequently a temporary rate to save your petitioner from loss, caused by the unwarranted and illegal action of the Commission in undertaking to change the relationship and the rate of remuneration between the Oklahoma Natural Gas Company, and this petitioner, becomes necessary.

6th. The valuation as shown in the appraisal and inventory submitted to the Commission heretofore, including the usual overheads, going value, and working capital, but excluding all bond discounts and other costs of money, and discarded property, after deducting depreciation, was as follows:

Oklahoma City .....	\$3,124,775.00
El Reno .....	416,738.00
Enid .....	714,133.00

(the figures for Oklahoma City include Britton, Bethany, Yukon and Putnam City, which are treated as a part of the Oklahoma City System as to operating expenses, construction, maintenance, etc).

The inventory and appraisal was made on property in existence, and used and useful in the distribution of natural gas in the cities and towns above enumerated, as of March 31st, 1920, and since the latter date, your petitioner has expended on, and added to, the distribution systems above enumerated, the following amounts:

Oklahoma City .....	\$100,068.03
El Reno .....	3,428.70
Enid .....	26,549.37

so that a valuation as of May 31st, 1921, not including, however, any discounts on securities or costs of money, values of franchises, contracts, or other intangibles, except the single item of going value, would be as follows:

Oklahoma City .....	\$3,224,843.00
El Reno .....	420,165.00
Enid .....	740,682.00

The theory of valuation upon which these figures are based has had the approval of the Supreme Court of the United States in all of the recent cases on the subject of valuation.

56 7th. Your petitioner further shows that the actual cost of material and labor, as shown by your petitioners' books with the usual overheads, such as engineering, interest during construction, etc., and going concern value added, but with no addition for the cost of money or discarded property, value of franchises, gas contracts, or other and proper intangibles for the period ending May 31st, 1921, is as follows:

Oklahoma City .....	\$2,365,403.81
El Reno.....	293,301.22
Enid .....	567,177.70

Your petitioner further states that in addition to the figure last referred to, there should, in all justness and fairness, be added a proper allowance for discounts on securities and other costs of money, together with a proper allowance for the value of franchises, gas contracts, and other intangibles, for it is perfectly evident that if it becomes necessary to issue securities in order to raise capital for the purpose of adding to the distribution system and such securities are of necessity sold at less than par value, the difference between the sum realized and the par value of the securities is a proper part of the cost of making such extensions.

This is true whether the same is done by a private business concern, or a public utility company.

The cost of money is as proper an element in the cost of a plant as is the cost of material and labor.

In addition to the foregoing, in the City of Oklahoma City, the Oklahoma Gas & Electric Company was compelled to, and did, pay \$396,000.00 for the acquisition of the contract under which it is now operating, and which was originally granted by the Oklahoma Natural Gas Company to Mr. Eugene Mackey, for the distribution of natural gas in the City of Oklahoma City, and acquired from him by intermediate assignment by your petitioner.

57 8th. For the year ending March 31st, 1921, which is the year during which the so-called 48 cent rate was in effect, there was sold and distributed in the towns enumerated herein, gas for domestic and industrial purposes as follows:

Oklahoma City, Domestic.....	2,523,097 M cu. ft.
“ “ Industrial.....	1,751,414 “
El Reno, Domestic .....	182,086 “
“ Industrial.....	156,953 “
Enid, Domestic.....	499,719 “
“ Industrial .....	429,078 “

To supply the same amount of gas during the coming year, assuming unaccounted for gas at but twenty per cent, and your petitioner

states that this 20 per cent is lower than the percentage which obtains in the City of Tulsa, or the other towns operated by the Oklahoma Natural Gas Company, in which no agency contracts exists, as testified to by their own witness, Dr. Wyer, would require your petitioner to purchase from the Oklahoma Natural Gas Company the following quantity of gas:

Oklahoma City.....	5,343,140 M cu. ft.
El Reno.....	423,790 "
Enid .....	1,160,999 "

Your petitioner further states that the price it would have to pay to the Oklahoma Natural Gas Company under Order No. 1886, to secure the necessary gas to supply the same quantity disposed of in the towns herein enumerated, would be as follows:

Oklahoma City.....	\$1,226,322.00
El Reno.....	96,142.00
Enid .....	263,632.00

Your petitioner further states that if the present rates of 40 cents for the first 100 thousand feet of gas, 32 cents for the next 400 thousand, and 25 cents for all excess, were permitted to remain in force and effect for the coming year, and assuming that your petitioner would do the same amount of business which it did in the 58 year ending March 31st, 1921, its receipts would be as follows:

Oklahoma City.....	\$1,447,092.00
El Reno.....	112,072.00
Enid .....	302,003.80

Your petitioner further states that for the year ending March 31st, 1921, during which period of time the so-called 48 cent rate was in effect, its gross receipts in the towns herein referred to, were as follows:

Oklahoma City.....	\$1,768,492.00
El Reno.....	141,316.50
Enid .....	302,003.80

(In the City of Enid, the 48 cent rate was never effective, but the same rates as are now in effect, namely, the 40 cent rate was effective.)

Your petitioner further states, as is shown above, that the loss in revenue to your petitioner because of reduction in rates from 48 cents to 40 cents in Oklahoma City amounts to \$321,400.00, and in El Reno, amounts to \$29,344.50. Your petitioner further states that the operating costs, other than the cost of gas in the respective towns we have enumerated for the year ending March 31st, 1921, were as follows:

Oklahoma City.....	\$229,719.93
El Reno .....	35,053.86
Enid .....	56,635.85

Your petitioner further states that if the attempted abrogation of the contracts heretofore existing between your petitioner and the Oklahoma Natural Gas Company should be held to be legal and justified, all losses in collections are shifted from the Oklahoma Natural Gas Company to your petitioner, and your petitioner states that such losses in collections may be reasonably fixed at one per cent (1%) of the gross volume of business, so that to the operating expenses last above enumerated, there should be added the following amounts to cover this item of losses in collection:

59	Oklahoma City .....	\$14,471.00
	El Reno .....	1,121.00
Enid .....		3,020.00

Your petitioner further states that if it is compelled to pay to the Oklahoma Natural Gas Company, under Order No. 1886, the sum above indicated, assuming that your petitioner retains all of its present business, both domestic and manufacturing (which is a condition that cannot even be hoped for by the most enthusiastic optimist) its net return in the respective towns above enumerated, to cover depreciation and return on investment would be as follows:

Oklahoma City .....	[\$33,421.00
El Reno .....	20,245.00
Enid .....	21,285.00]*

In other words, if the same volume of business, both domestic and manufacturing could be retained for the coming year, your petitioner would receive \$33,421.00 in Oklahoma City, \$20,245.00 in El Reno, and \$21,285.00 in Enid, less than the cost of gas and other operating expenses, without making any provision for depreciation, or return on a fair value of the property.

9th. Your petitioner further states that because of the rapid decline in the price of fuel oil it is impossible to sell any gas whatsoever at the present time for manufacturing purposes, and that a rate of 20 cents at the gate for gas for manufacturing purposes means a cost to the Company of 25 cents at the gate, because of the fact that for every 1,000 feet of gas actually sold for manufacturing purposes it will have to purchase 1,250 feet of gas to take care of the normal unaccounted for gas in the cities served by it, and that 1,250 feet of gas at 20 cents represents a cost at the gate of 25 cents, and your petitioner further states that therefore it cannot afford to sell gas to any manufacturing institution under the conditions prevailing at the present time, and that therefore the condition now confronting the company resolves itself into one of supplying gas for domestic purposes only.

Your petitioner further states that the sale of gas for manufacturing purposes in all of the towns herein enumerated, has in the past few months absolutely been reduced to a negligible quantity,

[\*In red in copy.]

and further states that there is no prospect for a change of conditions which will enable your petitioner to again dispose of natural gas for manufacturing purposes.

Your petitioner further states that the item of unaccounted for gas is a constant factor and not properly gauged by percentages. In other words, your petitioner states that this item will be as great in volume when gas is supplied to domestic consumers only as it would be if both domestic and manufacturing consumers were being supplied.

Your petitioner further states that the unaccounted for gas in the towns hereinabove referred to, with the exception of the City of Enid, for the year ending March 31st, 1921, was as follows:

Oklahoma City .....	586,626 M cu. ft.
El Reno .....	59,663 "

Your petitioner further states that accurate and correct figures for Enid are not available, as for a long portion of the time the meter at Enid was not in working order and gas was being distributed direct to consumers without passing through the meter, as was testified to by Mr. Clark, the meter man of the Oklahoma Natural Gas Company in hearings before your Commission.

Your petitioner further states that the facts above set forth, which have been heretofore established before your Commission, and which stand uncontradicted, show that it will be necessary for your petitioner in order to supply the domestic consumers of the  
61 towns herein enumerated, with the exception of the City of Enid, to purchase from the Oklahoma Natural Gas Company, providing the same volume of domestic business can be done for the coming year as was done for the year ending March 31st, 1921, the following quantities of gas:

Oklahoma City .....	3,109,723 M cu. ft.
El Reno .....	241,749 "

and that said gas would cost your petitioner under the terms of Order No. 1886, the following amounts:

Oklahoma City .....	\$777,431.00
El Reno .....	60,438.00

Your petitioner further states that under the rates now prevailing for domestic gas, namely, 40 cents, the receipts from the consumers to your petitioner, on the basis just referred to, would be as follows:

Oklahoma City .....	\$1,009,239.00
El Reno .....	72,834.40

Your petitioner further states that the operating expenses, other than the cost of gas, will remain fixed at the figure as they were for the past year, for the reason that the same number of employees, the same amount of maintenance, the same amount of taxes, with

possibly an increase in the latter item, will have to be paid irrespective of whether any manufacturing business is done or not. And, your petitioner further states, that in view of the fact that no manufacturing business can be retained under the price fixed by Order No. 1886, and the prevailing price of fuel oil, your petitioner would have available to meet depreciation and return on investment, the following amounts:

Oklahoma City .....	[\$18,006.00
El Reno .....	23,386.00]*

Your petitioner states, therefore, that after paying for the cost of gas, and other operating expenses, under Order No. 1886, if the present rates to consumers are permitted to remain, it will receive from consumers \$18,006.00 less than its actual operating costs in Oklahoma City, leaving no margin whatever for depreciation and return on the investment, and in the City of El Reno, your petitioner will receive \$23,386.00 less than its actual outlay to cover cost of gas and operating expenses.

Your petitioner further states that in the City of Enid, assuming the loss of all manufacturing business, which, as your petitioner has pointed out, is inevitable, and has practically taken place, not only in Enid, but in all the other towns and cities referred to in this petition, and applying a percentage of but twenty per cent to cover the item of unaccounted for gas, it would find itself in the position set forth below under the rates to consumers existing there and the rates fixed in Order No. 1886.

Gross Income .....	\$191,395.96
Cost of Gas .....	\$156,162.00
Operating expenses .....	56,635.85
Losses in Collections .....	1,913.95
	<hr/>
	214,711.80
	<hr/>
	[23,315.84]*

Your petitioner states, as shown above, that the total expenses of operation amount to \$214,711.80, with a possible revenue of but \$191,395.96, leaving a deficit of \$23,315.84. In other words, the company will receive \$23,315.84 less than its actual operating expenses without any allowance for depreciation or return on investment.

Your petitioner further states that pending a final valuation of its property, in order that it may maintain its credit and maintain the same net earnings which it earned for the year ending March 31st, 1921, and which said net earnings your petitioner states were not sufficient to give it a proper and reasonable return on the value of its property used and useful in distributing natural gas in the cities and towns referred to in this petition, it will have to have a temporary rate for domestic consumption the following net rates:

\*In red in copy.]

Oklahoma City .....	60	cents	per	M	cu.	ft.
El Reno .....	88	"	"	"	"	"
Enid .....	65	"	"	"	"	"

Your petitioner further shows that in the past, because of the contracts which were, and as petitioner claims, still are in existence unless the Order No. 1886 is a legal and binding order, its chief revenue came from the sale of natural gas to manufacturing concerns, and that under the rate proposed in Order No. 1886, it will be impossible to maintain any of the manufacturing business, and that all of the revenue heretofore enjoyed by your petitioner from that class of business is to it now and forever lost.

Wherefore, all of the facts being considered, and it appearing that under said Order No. 1886, and the conditions now applying to the business of distributing natural gas in the cities and towns in this petition mentioned, your petitioner will be operating at an actual loss of \$18,006.00 in Oklahoma City, \$23,386.00 in El Reno, and \$23,315.00 in Enid, and this without any provision having been made for depreciation or return on the fair value of the property used and useful in distributing natural gas in the cities and towns referred to in this petition, your petitioner always reserving to itself the right to appeal from Order No. 1886 in Cause No. 2023, and also reserving to itself any and all other legal or equitable remedies and rights it may have in connection with said Order No. 1886, in Cause No. 4023, prays that a temporary order be made fixing rates to consumers in the above enumerated cities and towns so

64 that the loss to which your petitioner is subjected because of the change in conditions brought about by Order No. 1886, aforesaid, and the conditions and facts herein referred to, may be minimized, until such time as a final valuation of its property may be made by this Commission and a final and permanent rate established.

OKLAHOMA GAS AND ELECTRIC  
CO.,  
By PAUL REISS,  
*Attorney.*

65

## EXHIBIT B.

In the Supreme Court of the State of Oklahoma.

No. —.

MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Appellant,

vs.

THE STATE OF OKLAHOMA and THE CORPORATION COMMISSION OF  
THE STATE OF OKLAHOMA, Appellees.

*Application for Supersedeas.*

Comes now the Muskogee Gas and Electric Company, a corporation organized under the laws of the State of Oklahoma, appellant herein, and respectfully shows to the Court that on the 29th day of June 1921, it filed an application with the Corporation Commission praying for an increase in its gas rates wherein it set forth that the then existing schedule of gas rates theretofore prescribed by the Corporation Commission, and charged by your appellant, was wholly inadequate and did not afford it a fair and adequate return upon the value of its property used and useful in discharging its duties in furnishing gas to the public; a copy of which said application is hereto attached, marked "Exhibit A," and made a part hereof. Appellant prayed that the Corporation Commission make an order allowing it to charge a rate to domestic consumers as follows:

In the City of Muskogee, 80 cents per M cubic feet, net.

On July 1st, 1921, the Commission entered its order, being Order No. 1890, denying appellant's application, but allowed it a temporary increase of 5 cents per thousand cubic feet.

Appellant respectfully shows to this Court that it has appealed from said Order No. 1890 of the Corporation Commission,

66 to this Court, and said appeal has been allowed, and that it also has applied to the said Corporation Commission to supersede said Order, which application the Corporation Commission has denied.

Appellant further shows to the court that the property used and useful in delivering natural gas to its consumers in the City of Muskogee, is not less than \$1,411,274.00.

Appellant further shows to this Court that the Corporation Commission of the State of Oklahoma has never fixed a valuation of its property used and useful in its said business of furnishing gas to the public, though your appellant has had on file a petition praying for said valuation for more than one year, and on which application the Commission held repeated hearings, and finally closed the matter of hearings on the same, on January 8th, 1921, but since which time the Commission has not made any finding whatsoever as to said valuation.

Your appellant further shows to the Court that said Order No.

1890, was made by the Corporation Commission without a hearing, and without any investigation as to the merits of appellant's application for increased rates, and that it has never granted appellant a hearing on the said application filed on the 29th day of June, 1921.

Appellant alleges that the rates it is allowed to charge under said Order No. 1890 of the said Corporation Commission are wholly unremunerative and do not give it a fair return on the value of its property used and useful in its said business, and that the said Order fixing the said rates is therefore confiscatory, and takes appellant's property without due process of law, contrary to the Constitution of this State, and the Constitution of the United States.

Your appellant further shows that it purchases the gas which it distributes in the City of Muskogee, from the Oklahoma Natural Gas Company, under Order No. 1886 of the Corporation Commission, known as the Gate-rate Order, by which order appellant is required to pay said Oklahoma Natural Gas Company the sum of 25 cents per thousand cubic feet for the first five hundred thousand cubic feet of gas sold to each consumer, and so purchased by it from the Oklahoma Natural Gas Company, and 20 cents per thousand cubic feet for all gas purchased by it from said Oklahoma Natural Gas Company and sold to each consumer in excess of said first five hundred thousand cubic feet.

Your appellant further shows that the cost of gas under said Gate-rate Order, since July 1st, 1921, to September 30th, 1921, is as follows, for said City of Muskogee:

July.	August.	September.
\$18,144.50	\$17,730.50	\$17,000.75

and that the cost of gas, as above stated, is largely in excess of the cost of gas under the contracts existing between the Muskogee Gas and Electric Company and the Oklahoma Natural Gas Company prior to the issuance of said Order No. 1886 by the Corporation Commission cancelling said contracts and substituting therefor the said gate rate.

Your appellant alleges that had the so-called gate rate under the Corporation Commission's Order No. 1886 been in force and effect for the twelve months beginning October 1st, 1920, and ending September 30th, 1921, and had the present rates to consumers in the City of Muskogee been in effect for the same period of time, your appellant would have had \$9,261.00 less than nothing, available for depreciation, amortization and return on the property used and useful in distributing natural gas in the said City of Muskogee.

Your appellant alleges that if the same volume of business could be retained for the next twelve months as was done during the twelve months period ending September 30th, 1921, under Order No. 1886 of the Corporation Commission and the rates now in force and effect, it would have nothing available for depreciation, amortization and return on the property used and useful in distributing natural gas in said City of Muskogee, but in lieu

thereof would have a deficit of \$9,261.00 as a result of said twelve month period of operations.

In other words, appellant alleges that for the year's operation the operating expenses and cost of gas would exceed the gross receipts from the sale of gas in the City of Muskogee in the sum of \$9,261.00.

Your appellant further shows to the Court that the Oklahoma Natural Gas Company did, on the 16th day of December, 1921, obtain from the United States District Court for the Western District of Oklahoma, a temporary restraining order, enjoining the said Order No. 1886 of the Corporation Commission, and has, or will immediately, place in effect a gate rate of not less than 35 cents per thousand cubic feet of gas, which will greatly increase the cost of gas to this appellant and thereby greatly diminish its revenues and render the rates that it is now permitted to charge under the order of the Corporation Commission, still more inadequate and unremunerative and completely confiscatory, and your appellant alleges that it will therefore be necessary for this court to immediately put into effect the following schedule of rates to consumers in order to give appellant an adequate and fair return upon the value of its property used and useful in its business of furnishing gas in said City of Muskogee, to-wit:

The first 500 M cubic feet per month, 80¢ per M cubic feet, net;  
Excess of 500 M cubic feet per month, 25¢ per M cubic feet, net.

69 Your appellant further shows to this Court that this cause cannot be prepared, submitted to and decided by this court for several months, and pending a decision by this court your appellant is being subjected to a confiscation of its property in violation of the Constitution of this State, and the Constitution of the United States, and unless it is granted a supersedeas herein and permitted to charge the rates prayed for herein, it will suffer great and irreparable damage.

Wherefore, pending this appeal, appellant prays this court to supersede said order of the Corporation Commission and to allow it to charge the schedule of rates applied for herein, and hereby offers to comply with such terms as may be imposed by this court, including the giving of a bond in such sum as may be fixed by this court, conditioned that it will refund to its customers the difference between the rates charged and collected by it and the rates which may be fixed by this court on appeal, and your appellant offers to keep its books so as to give the necessary information on which to make any such refund, if it becomes necessary, and to comply with any and all other conditions prescribed by law or by this court.

MUSKOGEE GAS AND ELECTRIC  
COMPANY.

By ———, *Attorney.*

70      STATE OF OKLAHOMA,  
             *County of Oklahoma, ss:*

W. R. Emerson, being duly sworn, says that the facts stated in the foregoing application are true; that he is Treasurer of the Muskogee Gas and Electric Company, and is making this affidavit from his own personal knowledge and for and on behalf of the Muskogee Gas and Electric Company.

Subscribed and sworn to before me this — day of December, 1921.

\_\_\_\_\_,  
*Notary Public.*

My commission expires — —, —.

71      To the Attorney General of the State of Oklahoma:

Please take notice that the foregoing application for supersedeas will be presented to the Supreme Court of the State of Oklahoma at nine o'clock A. M. on the 17th day of December, 1921, or as soon thereafter as counsel can be heard.

\_\_\_\_\_,  
*Attorney for Appellant.*

To the Corporation Commission of the State of Oklahoma:

Please take notice that the foregoing application for supersedeas will be presented to the Supreme Court of the State of Oklahoma at nine o'clock A. M. on the 17th day of December, 1921, or as soon thereafter as counsel can be heard.

\_\_\_\_\_,  
*Attorney for Appellant.*

Service of the foregoing notice and application, and receipt of a copy thereof is hereby acknowledged this 16th day of December, 1921.

\_\_\_\_\_,  
*Attorney General of the State of Oklahoma.*

Service of the foregoing notice and application and receipt of a copy thereof, is hereby acknowledged, this 16th day of December, 1921.

CORPORATION COMMISSION OF  
 THE STATE OF OKLAHOMA,

By — —.

72

## EXHIBIT A TO EXHIBIT B."

Before the Corporation Commission of Oklahoma.

Cause No. 4301.

In the Matter of Gas Rates at MUSKOGEE, OKLAHOMA.

(Order #1890, June 29, 1921.)

*Amended Petition.*

Comes now the Muskogee Gas and Electric Company, and for its amended petition in said cause, refusing to waive and expressly reserving to itself the right to appeal from Order No. 1886, in Cause No. 4023, and also reserving to itself any and all other legal or equitable remedies and rights it may have in connection with said Order No. 1886, in Cause No. 4023, states:

1st. That it is a public service corporation, and engaged in distributing natural gas in the City of Muskogee, and that in said city it is, and was acting under certain contracts with the Oklahoma Natural Gas Company which are on file with this Commission, and which are hereby made a part of this petition, the same as if they were set out in full herein.

2nd. That under said contracts, your petitioner herein receives as its compensation one third ( $\frac{1}{3}$ ) of the proceeds of all gas sold for more than fifteen cents per thousand cubic feet.

3rd. That this Commission, under an order dated June 25th, 1921, undertook to abrogate said contracts and change the relationship existing between the Oklahoma Natural Gas Company and this petitioner, and undertook to give to the Oklahoma Natural Gas Company a greater share of the receipts from the sale of natural gas in said City of Muskogee, and also undertook to shift from the Oklahoma Natural Gas Company to the petitioner herein, the burden of paying for unaccounted for gas, and all losses in collection, all of which this petitioner claims is contrary to law and not justified by the facts and testimony as the same appear from the record in said Cause No. 4023.

4th. That for many years your petitioner has been acting under said contracts without receiving an adequate return on the investment it was called upon to make under said contracts, and that the change now sought to be brought about in the relationship between the Oklahoma Natural Gas Company and your petitioner, compels this petitioner to ask for a temporary relief pending a final valuation of its property and a final determination of the legal right of the Commission to change said relations and the fixing of a permanent rate to the consumers of natural gas in the City of Muskogee.

5th. Your petitioner further states that it did, in the fall of 1920, submit to this Commission an inventory and appraisal of its property devoted to the public use in distributing natural gas in the City of Muskogee and that numerous public hearings were had on the same, and that said matter of valuation was finally closed and submitted to this Commission for decision on January 28th, 1921, but that up to the present time the Commission has not acted in said matter of valuation, and therefore this petitioner is not in a position to state what valuation should be used in fixing a rate to the consumer until said valuation has been finally fixed, and consequently a temporary rate to save your petitioner from loss, caused by the unwarranted and illegal action of the Commission in undertaking to change the relationship and the rate of remuneration between the Oklahoma Natural Gas Company, and this petitioner, becomes necessary.

6th. The valuation as shown in the appraisal and inventory submitted to the Commission heretofore, including the usual overheads, going value, and working capital, but excluding all bond discounts and other costs of money, and discarded property, after deducting depreciation, was as follows:

City of Muskogee..... \$1,403,688.00

The inventory and appraisal was made on property in existence, and used and useful in the distribution of natural gas in the City of Muskogee, as of March 31st, 1920, and since the latter date your petitioner has expended on, and added to the distribution of said city, the following amount:

City of Muskogee..... \$33,977.62

so that a valuation as of May 31, 1921, not including, however, any discounts on securities or costs of money, values of franchises, contracts, or other intangibles, except the single item of going value, would be as follows:

City of Muskogee..... \$1,437,666.00

The theory of valuation upon which these figures are based has had the approval of the Supreme Court of the United States in all of the recent cases on the subject of valuation.

7th. Your petitioner further shows that the actual cost of material and labor, as shown by your petitioners' books, with the usual overheads such as engineering, interest during construction, etc., and going concern value added, but with no addition for the cost of money or discarded property, value of franchise, gas contracts, or other and proper intangibles, for the period ending May 31st, 1921, is as follows:

City of Muskogee..... \$1,135,846.00

Your petitioner further states that in addition to the figures last referred to, there should, in all justness and fairness, be added a proper allowance for discounts on securities and other costs of money,

together with a proper allowance for the value of franchises, gas contracts, and other intangibles, for it is perfectly evident that if it becomes necessary to issue securities in order to raise capital for the purpose of adding to the distribution system and such securities are of necessity sold at less than par value, the difference between the sum realized and the par value of the securities is a proper part of the cost of making such extensions.

This is true whether the same is done by a private business concern or a public utility company.

The cost of money is as proper an element in the cost of a plant as is the cost of material and labor.

In addition to the foregoing, in the City of Muskogee, the Muskogee Gas and Electric Company was compelled to, and did pay \$300,000.00 for the acquisition of the contract and a partially constructed distributing system under which it is now operating, and which was originally granted by the Caney River Gas Company to 75 local Muskogee parties for the distribution of natural gas in the City of Muskogee, and acquired from them by intermediate assignment by your petitioner.

8th. For the year ending March 31st, 1921, which is the year during which the so-called 48 cent rate was in effect there was sold and distributed in the City of Muskogee, gas for domestic and industrial purposes as follows:

City of Muskogee, Domestic.....	2,523,097 M cu. ft.
Industrial.....	1,751,414 " "

To supply the same amount of gas during the coming year, assuming unaccounted for gas at but twenty per cent, and your petitioner states that this 20 per cent is lower than the percentage which obtains in the City of Tulsa, or the other towns operated by the Oklahoma Natural Gas Company, in which no agency contracts exist, as testified to by their own witness, Dr. Wyer, would require your petitioner to purchase from the Oklahoma Natural Gas Company the following quantity of gas:

City of Muskogee.....	1,812,110 M cu. ft.
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Your petitioner further states that the price it would have to pay to the Oklahoma Natural Gas Company under Order No. 1886, to secure the necessary gas to supply the same quantity disposed of in the City of Muskogee, would be as follows:

City of Muskogee.....	\$416,617.00
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Your petitioner further states that if the present rates of 40 cents for the first 100 thousand feet of gas, 32 cents for the next 400 thousand, and 25 cents for all excess, were permitted to remain in force and effect for the coming year, and assuming that your petitioner would do the same amount of business which it did in the year ending March 31st, 1921, its receipts would be as follows:

City of Muskogee.....	\$463,366.00
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Your petitioner further states that for the year ending March 31st, 1921, during which period of time the so-called 48 cent rate was in effect, its gross receipts in said city of Muskogee were as follows:

City of Muskogee..... \$586,631.33

76 Your petitioner further states, as is shown above, that the loss in revenue to your petitioner because of reduction in rates from 48 cents to 40 cents amounts to \$123,265.33.

Your petitioner further states that the operating costs, other than the cost of gas, in said City of Muskogee, for the year ending March 31st, 1921, were as follows:

City of Muskogee..... \$113,243.53

Your petitioner further states that if the attempted abrogation of the contracts heretofore existing between your petitioner and the Oklahoma Natural Gas Company should be held to be legal and justified, all losses in collection are shifted from the Oklahoma Natural Gas Company to your petitioner, and your petitioner states that such losses in collections may be reasonably fixed at one per cent (1%) of the gross volume of business, so that to the operating expenses last above enumerated, there should be added the following amount to cover this item of losses in collection:

City of Muskogee..... \$4,634.00

Your petitioner further states that if it is compelled to pay to the Oklahoma Natural Gas Company, under Order No. 1886, the sum above indicated, assuming that your petitioner retains all of its present business, both domestic and manufacturing, (which is a condition that cannot even be hoped for by the most enthusiastic optimist its net return in the City of Muskogee, to cover depreciation and return on investment, would be as follows:

City of Muskogee..... \$71,128.53

In other words, if the volume of business, both domestic and manufacturing could be retained for the coming year, your petitioner would receive \$71,128.53 in Muskogee, less than the cost of gas and other operating expenses, without making any provision for depreciation or return on a fair value of the property.

9th. Your petitioner further states that because of the rapid decline in the price of fuel oil it is impossible to sell any gas whatsoever at the present time for manufacturing purposes, and that a rate of 20 cents at the gate for gas for manufacturing purposes

77 means a cost to the company of 25 cents at the gate, because of the fact that for every 1,000 feet of gas actually sold for manufacturing purposes it will have to purchase 1,250 feet of gas to take care of the normal unaccounted for gas in the cities served by it, and that 1,250 feet of gas at 20 cents represents a cost at the gate of 25 cents, and your petitioner further states that therefore it cannot afford to sell gas to any manufacturing institution under the conditions prevailing at the present time, and that therefore the con-

dition now confronting the company resolves itself into one of supplying gas for domestic purposes only.

Your petitioner further states that the sale of gas for manufacturing purposes in the City of Muskogee has in the past few months been reduced to a negligible quantity, and further states that there is no prospect for a change of conditions which will enable your petitioner to again dispose of natural gas for manufacturing purposes.

Your petitioner further states that the item of unaccounted for gas is a constant factor and not properly gauged by percentages. In other words, your petitioner states that this item will be as great in volume when gas is supplied to domestic consumers only as it would be if both domestic and manufacturing consumers were being supplied.

Your petitioner further states that the unaccounted for gas in the City of Muskogee for the year ending March 31st, 1921, was as follows:

City of Muskogee.....517,234 M cu. ft.

Your petitioner further states that the unaccounted for gas referred to above is greater than the amount found to prevail in the Oklahoma City or Tulsa plants, but your petitioner states that a great percentage of the leakage was found to be on the lines of the Oklahoma Natural Gas Company within the limits of Muskogee, and on the lines of the City of Muskogee, within the city limits of Muskogee, which said lines were connected with the distribution system of this petitioner, but were not under the control or owned by this petitioner.

Your petitioner further states that this fact was fully developed at a hearing before your commission in the early part of this year and that when due allowance is made for the leakage on the lines owned by the City of Muskogee, it will be found that the leakage on the lines owned and controlled by your petitioner in the City of Muskogee is not greatly out of proportion to the general average of leakage in well maintained natural gas distribution systems.

Your petitioner further states that the leakage problem in Muskogee is magnified because of the fact that the street railway company has not its rails properly bonded, and therefore, there is a great deal of electrolytic action in the City of Muskogee.

Your petitioner further states that this condition of affairs has been called to the attention of your commission by petitioner on several occasions in the past, and further states that if the burden of accounting for the unaccounted for gas in the City of Muskogee is to be shifted from the Oklahoma Natural Gas Company to your petitioner, proper steps should be taken by your Commission to compel the City of Muskogee, the Muskogee Traction Company, and the Oklahoma Natural Gas Company to remedy the conditions hereinbefore referred to.

Your petitioner further states that the facts above set forth, which have been heretofore established before your Commission, and which

stand uncontradicted, show that it will be necessary for your petitioner in order to supply the domestic consumers of the City of Muskogee, to purchase from the Oklahoma Natural Gas Company, providing the same volume of domestic business can be done for the coming year as was done for the year ending March 31st, 1921, the following quantity of gas:

City of Muskogee.....1,384,373 M cu. ft.

and that said gas would cost your petitioner under the terms of Order No. 1886, the following amount:

City of Muskogee.....\$346,093.00

79 Your petitioner further states that under the rates now prevailing for domestic gas, namely, 40 cents, the receipts from the consumers to your petitioner, on the basis just referred to, would be as follows:

City of Muskogee.....\$346,856.00

Your petitioner further states that the operating expenses, other than the cost of gas, will remain fixed at the figure as they were for the past year, for the reason that the same number of employees, the same amount of maintenance, the same amount of taxes, with possibly an increase in the latter item, will have to be paid irrespective of whether any manufacturing business is done or not. And, your petitioner further states, that in view of the fact that no manufacturing business can be retained under the price fixed by Order No. 1886, and the prevailing price of fuel oil, your petitioner would have available to meet depreciation and return on investment, the following amount:

City of Muskogee.....\$115,950.00

Your petitioner states, therefore, that after paying for the cost of gas, and other operating expenses, under Order No. 1886, if the present rate to consumers is permitted to remain, it will receive from consumers \$115,950.00 less than its actual operating costs in the City of Muskogee, leaving no margin whatever for depreciation and return to the investment.

Your petitioner further states that pending a final valuation of its property, in order that it may maintain its credit and maintain the same net earnings which it earned for the year ending March 31st, 1921, and which said net earnings your petitioner states were not sufficient to give it a proper and reasonable return on the value of its property used and useful in distributing natural gas in the City of Muskogee, it will have to have as a temporary rate for domestic consumption the following net rates:

City of Muskogee.....80 cents per M cu. ft. net.

80 Your petitioner further shows that in the past, because of the contracts which were, and as petitioner claims, still are in existence, unless the Order No. 1886 is a legal and binding order, its chief revenue came from the sale of natural gas to manufacturing concerns, and that under the rate proposed in Order No. 1886, it will be impossible to maintain any of the manufacturing business, and that all of the revenue heretofore enjoyed by your petitioner from that class of business is to it now and forever lost.

Wherefore, all of the facts being considered, and it appearing that under said Order No. 1886, and the conditions now applying to the business of distributing natural gas in the City of Muskogee, your petitioner will be operating at an actual loss of \$115,950.00 and this without any provision having been made for depreciation or return on the fair value of the property used and useful in distributing natural gas in the City of Muskogee, your petitioner always reserving to itself the right to appeal from Order No. 1886 in Cause No. 4023, and also reserving to itself any and all other legal or equitable remedies and rights it may have in connection with said Order No. 1886, in Cause No. 4023, prays that a temporary order be made fixing rates to consumers in the City of Muskogee so that the loss to which your petitioner is subjected because of the change in conditions brought about by Order No. 1886, aforesaid, and the conditions and facts herein referred to, may be minimized until such time as a final valuation of its property may be made by this Commission and a final and permanent rate established.

MUSKOGEE GAS AND  
ELECTRIC CO.,

By — — —, Attorney.

81 EXHIBIT "C."

In the Supreme Court of the State of Oklahoma.

No. 12918.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, Plaintiff  
in Error,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and  
THE STATE OF OKLAHOMA, Defendants in Error.

Order.

This cause coming on for hearing upon the application for super-  
adeas filed by the Appellant, the Court, after hearing the argument  
of counsel and being fully advised in the premises, finds: That con-  
ditions have so materially changed since the order appealed from was

rendered by the Corporation Commission, that the interest of justice requires that said cause be remanded to the Commission to be further investigated by the Commission and reported upon to the Court; that this order contemplates that the powers and jurisdiction of the Commission in the investigation hereby ordered shall be as full and complete as if no appeal from said order had been taken. That this investigation shall be had before the Commission within fifteen days from date hereof, and the report of the Commission, together with its findings and conclusions, transmitted to this court. In the meantime further action on the application for supersedeas is continued.

Done in Chambers this the 17th day of December, 1921

(Signed)

JNO. B. HARRISON,  
*Chief Justice.*

82

## EXHIBIT "D."

In the Supreme Court of the State of Oklahoma

No. 12919.

MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Plaintiff in  
Error,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and  
THE STATE OF OKLAHOMA, Defendants in Error.

*Order.*

This cause coming on for hearing upon the application for supersedeas filed by the Appellant, the Court, after hearing the argument of counsel and being fully advised in the premises, finds: That conditions have so materially changed since the order appealed from was rendered by the Corporation Commission, that the interest of justice requires that said cause be remanded to the Commission to be further investigated by the Commission and reported upon to the Court; that this order contemplates that the powers and jurisdiction of the Commission in the investigation hereby ordered shall be as full and complete as if no appeal from said order had been taken. That this investigation shall be had before the Commission within fifteen days from date hereof, and the report of the Commission, together with its findings and conclusions, transmitted to this Court. In the meantime further action on the application for supersedeas is continued.

Done in Chambers this the 17th day of December, 1921.

JNO. B. HARRISON,  
*Chief Justice.*

83

## "EXHIBIT E."

Before the Corporation Commission of the State of Oklahoma.

Cause No. 4302. Order No. 1995.

In the Matter of Gas Rates at OKLAHOMA CITY, EL RENO, ENID,  
YUKON, and BRITTON, OKLAHOMA.

*Findings of Fact, Opinion, and Order.*

This case was filed June 22, 1921. The petitioner, the Oklahoma Gas & Electric Company, is, and was at that time, engaged in the business of receiving natural gas from the Oklahoma Natural Gas Company at the town of Oklahoma City and the other towns mentioned in the title of the case, and selling the same to the public in the various towns for domestic and industrial uses.

The gas was distributed to consumers at rates prescribed by this Commission. Settlement was made between the supplying and distributing gas companies on shares in the proceeds of collections for gas sold, the share of each being governed by contract.

When this case was filed the Oklahoma Gas & Electric Company anticipated that the contract referred to was about to be set aside by this Commission and that a settlement by the distributing company for all gas received at the city border would be required.

The petitioner requested in its petition in this case that at the time of change from the proportional contract relation between the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company to a gate rate basis, to govern payment for gas received, a proper rate for gas sold to consumers be fixed by the Corporation Commission.

This cause has never been formally consolidated with any other proceeding but is so closely involved with two other cases as to suggest that a statement of the issue in this case refer to said other proceedings.

The gate rate referred to in the petition herein was established by Corporation Commission Order No. 1886, dated June 28, 1921, in Cause 4023. This was a proceeding filed August 10, 1920, wherein the Oklahoma Natural Gas Company petitioned the Commission to find a valuation of its property and establish a gate rate or city border rate for gas furnished by said company for distribution to consumers in the several cities supplied directly or indirectly by said company.

The Oklahoma Gas & Electric Company, petitioner in this case, and the Muskogee Gas & Electric Company, petitioner in Cause 4301, which is identical with the present case except that it involves rates at Muskogee, Oklahoma, filed demurrers to the hearing of the application of the Oklahoma Natural Gas Company in Cause 4023, asking for a city border rate, but the same were over-ruled.

Prior to the filing of petition in the present case, to-wit: on November 26, 1920, the Oklahoma Gas & Electric Company and the

Muskogee Gas & Electric Company filed a petition in Cause 4142 requesting the Commission to find a valuation of properties of 84 said companies. Hearings under said application were held at various dates in 1920 and 1921, and exhibits and testimony were introduced offering the Commission a basis for arriving at such a valuation. At the present time no order has been entered in said Cause 4142.

On July 1, 1921, the Commission issued its Order 1889 in the present case, establishing certain rates to be charged consumers in the cities involved in this case, said order being designated as a temporary order and being issued in response to the request of the petitioner herein for a rate to consumers applicable as of the date when the change from the old contract to the city border rate basis should become effective as between the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company. Said gate rate order and Order 1889 became effective July 1, 1921.

Said Order 1889 was appealed by the Oklahoma Gas & Electric Company to the Supreme Court of Oklahoma, where it was contended that this Commission had no authority to make a temporary order of the character imputed by the Commission to Order 1889 without first finding a valuation of the property which had been and was being sought in Cause 4142. This contention was not sustained by the Supreme Court and Order 1889 was affirmed. Later, to-wit, on December 17, 1921, the petitioner in this case applied to the Supreme Court of Oklahoma for a writ of supersedeas by which it sought to suspend the operation of Order 1889 and secure from said court authority to collect very much higher rates than were prescribed in said order. The Supreme Court forthwith on the same date remanded said Order 1889 to the Corporation Commission with instructions to make further investigation and further report to said Court on the issues therein involved, such further report to be filed with the Supreme Court by the Corporation Commission within fifteen days, or on or before January 3, 1922. The petitioner herein thereafter, and before said January 3, 1922, filed proceedings in equity in the District Court of the United States in the Western District of Oklahoma, by which proceedings it sought to enjoin the Corporation Commission and the State of Oklahoma from enforcing the provisions of Order 1889.

The Corporation Commission took further evidence in this Cause on December 30th and 31st, 1921, but on account of the impossibility of having such evidence transcribed before January 3, 1922, and on account of being compelled to make preparation to answer the proceedings in equity in the United States court already referred to, this Commission was unable to make further report to the Supreme Court in this case on or before January 3, 1922, and, upon showing, was given additional time of fifteen days, or until January 18, 1922.

#### Valuation Theories.

While the petition in this case was filed June 22, 1921, the investigation by the Commission into the valuation of the property in-

volved in this case as a basis for a return has covered a period of practically fifteen months.

As already stated, in November, 1920, the company applied to the Commission for approval of a valuation of its property of all classes in all the cities involved in this proceeding. Its engineer stated that his preparation of the exhibits offered had taken one year and had involved the use of the time of about ten men. Valuations were submitted covering all gas and electric properties in the entire state owned by the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company. (Record, Cause 4142, Dec. 9, 1920, p. 25.) It was urged at that time that the Commission give its approval, with the least possible delay, to the valuation submitted, it being represented that the same was to be used for the purpose of re-financing outstanding obligations of the company rather than as a basis for establishing rates. However, the original application stated specifically that revision of certain rates was desired, and the Commission has never considered the rate issue other than as involved in that case. In fact the Commission has never assumed that it would have authority to give its approval or make a finding as to the valuation of a public utility except as a basis for rate adjustment.

The Commission employed an engineer and provided him with help for the purpose of making a verification of the quantities represented by the company's valuation as existing in its gas property in Oklahoma City, and an appraisal of the present value thereof. This work was begun June 1, 1921, and the engineer's report to the Commission was made November 1, 1921. This report represented the work of from five to ten men during this five months' period. (Record, Cause 4302, Dec. 30, 1921, p. 21.)

The company's engineer reported quantities as of April 1, 1920 (Record, Cause 4142, Dec. 9, 1920, p. 10.) His figures are submitted in Uhlendorf Company's Exhibit No. 3 in Cause 4142, pages 3 and 4. The letter of transmittal, beginning at page 3 of said exhibit, states that valuations are submitted on the basis of reproduction cost now and present value, and, in addition, reproduction cost and reproduction cost less depreciation, based on five year average prices for the period ended March 31, 1920. The figures representing such valuations for the Oklahoma City division of the company's gas property are as follows: Reproduction cost now \$3,152,905; present value, \$2,296,901; reproduction cost on five year average prices, \$2,539,793; reproduction cost less depreciation, based on five year average prices, \$1,853,286.00. These figures are exclusive of working capital, and going concern value.

The Commission's engineer reported that quantities shown in the inventory submitted by the company were found by him to be substantially correct. (Record, Cause 4302, p. 23.) The Commission's engineer submitted an exhibit on the replacement new theory (Musson's Exhibit No. 2, Cause 4302) and on the original cost theory, (Musson's Exhibit No. 1.) In making the appraisal on the replacement theory, quantities shown by the company's exhibits as of April 30, 1920, were used. To this were added additions and

betterments to the property down to July 31, 1921, evidences thereof being taken from the company's office work register. (Record, Cause 4302, p. 22.) Prices used were as of August 1, 1921, same being secured from supply houses or manufacturers, as to materials, and the labor costs being included, according to the engineer's testimony, at wages prevailing in Oklahoma City as of that date. (Record, Cause 4302, p. 25.)

The Commission's engineer developed an original cost appraisal by examining vouchers and bills. The replacement cost found by this engineer, based on August first, 1921, prices, was \$2,693,492. He estimated that the plant had been in use an average of eight years and found its present value on this theory to be \$2,092,876. His valuation of the property on the original cost theory was given as \$1,846,845, as of August 1, 1921.

During the period when the company's valuation figures were prepared the highest prices known in the history of the utility industry, as well as in all other industries, prevailed. Utilities urged upon courts and commissions generally, and upon this Commission, the adoption of the reproduction cost new theory as a basis for rate structures. The Minnesota rate case decided by the U. S. Supreme

86 Court in 1913 was pointed to as endorsing that theory. In that case, however, the court said that each case must rest upon its special facts, that the ascertainment of fair value is not controlled by artificial rules, that it is not a matter of formula but that there must be a reasonable judgment having its basis in a proper consideration of all relevant facts. In the case of Des Moines Gas Company vs. City of Des Moines, 238 U. S. 153, the Supreme Court held that each case must be controlled by its own circumstances, and that while in the Minnesota case reproduction cost was declared to be an appropriate method, there was no indication that it was the exclusive method of ascertaining values for rate making. This Commission known of no case in which the Supreme Court has considered specifically a valuation based upon reproduction cost during an abnormal period such as that upon which the company's reproduction valuation in this case is based, and the court clearly has not foreclosed itself by the Minnesota case, or any other, from taking into consideration any condition or circumstance which would have the effect of making the reproduction or any other theory unreasonable or unjust.

In the case of Brooklyn-Borough Gas Company vs. Public Service Commission, (P. U. R. 1918-F, 335-337) former Justice Charles E. Hughes, who wrote the opinion in the Minnesota rate case, sat as referee. In the Brooklyn case he was confronted squarely with the question as to the constitutional right of a public utility to have its reproduction cost in abnormal times adopted as a rate base, and in his opinion he said:

"When the value of a plant has been properly determined by the regulating authority, and suitable allowance is made for the investment in subsequent additions, it is manifestly proper to calculate the fair return upon this basis, at least for a reasonable period. In

the present case, the interval has been one of unusual circumstances incident to war, and of especially high costs, and there is no reason why there should be substituted for the official appraisal a hypothetical estimate of reproduction cost under abnormal conditions reaching an amount vastly in excess of the actual investment."

The Supreme Court of the United States in the cases above referred to, and numerous other cases, clearly has left the way open for this Commission to avail itself of all possible evidences as to the reasonable present value of the property of this company used and useful in the business of furnishing gas to its patrons; and in exercising full discretion and latitude to this end this Commission clearly has the approval of the author of the celebrated Minnesota decision.

### Replacement Cost.

Mr. Musson, the Commission's engineer in this case, submits as the replacement cost of the property, using quantities as of April 1, 1920, the prices as of August 1, 1921, the figures of \$2,693,492 (Musson's Exhibit No. 2). This amount includes, according to the practice of the company in reporting expansion of its plant from time to time, and consistent with the witness's testimony (Record p. 39) costs other than for physical plant slightly in excess of 20 per cent, these costs covering items such as engineering during construction, superintendence, legal expenses, injuries during construction, etc. Deducting 20 per cent for such items, or \$434,350, the replacement value of the physical plant is found to be \$2,258,642. A further deduction of \$46,802 for omissions and contingencies improperly included in plant account makes the figures \$2,201,842. The Witness states that additions and betterments were placed upon the property between April 1, 1920, and August 1, 1921, amounting to \$111,597, deducting 20 per cent, as in the case of the entire plant, for costs other than physical, the actual cost of the plant added during  
87 the period referred to becomes \$87,319, and it may be assumed that this actual cost would not be materially different from the replacement cost of the same items of property as of August 1, 1921. This leaves \$2,299,161 as the replacement value of the physical plant. Net construction costs August 1, 1921, to October 31, 1921, reported by the company add \$30,850 and this figure becomes \$2,319,911.00.

This plant includes (Record p. 30) property not used and useful in serving the public aggregating in replacement value the sum of \$46,570 (Record p. 30) which is to be deducted, and leaves \$2,273,341 as the replacement value of the plant used and useful.

Testimony shows (Exhibit- 2-B and 2-C) (Record p. 51) that the plant includes various items of property paid for by consumers who have not been reimbursed by the company. The Commission holds the company not entitled to a return upon property in which it has no investment. Exhibits 2-B and 2-C show money collected from

consumers for extensions between July 1, 1914 and February 1, 1921, amounting to \$10,887.43 and money advanced by consumers between June 30, 1917, and November 30, 1921, not subject to return to the consumer, amounting to \$5,877.25, or a total of \$16,764.68. The same exhibits show \$13,916.89 collected from consumers for extensions subject to refund according to the terms of contracts entered into between the company and each consumer, most of which contracts provide for the return to the consumer of 20 per cent of his gross bill for gas annually for four years, any balance unrefunded at the expiration of such time to be cancelled, and the extension to become the property of the company. The return of 20 per cent of the gross bill for four years would be equal to the return of 80 per cent of the gross bill for one year. The Commission considers reasonable the conclusion that not in excess of two-thirds of the amount of these conditional payments by consumers will be refunded within a four years' period, which leaves one-third of the investment represented by such amount absorbed by the company without cost, which proportion of \$13,916.89 or \$4,639.29 is to be added to the amount added to plant during the time specified which does not represent investment by the company, and makes the full amount \$21,404.97. Should the company at any time show that the Commission's conclusion as to the result of the refund contracts is unfair to the company any injustice, occasioned thereby, will be corrected. Notwithstanding the fact that Exhibits 2-B and 2-C were introduced in response to the request of the Commission for complete information as to what part of the plant had been provided by patrons, and that the practice of financing extensions in this manner is proven, the company did not offer any figures touching this subject as of a period prior to June 30, 1914. However, the figures furnished are found to be 3.5 per cent of the additions and betterments to the plant since June 30, 1914, and to indicate conclusively the trend or proportion of such investment in the property as a whole. Application of such percentage to the investment already developed shows the full amount of plant so financed to have cost \$79,566. It is clear that the company is not justified in capitalizing investment of this character, and it is fair to deduct the amount thereof. By this process we find the present reproduction value of the property used and useful, paid for by the company, to be \$2,193,775 as of November 1, 1921.

But it is the replacement value as of the present date, the date of hearing, with which the Commission is concerned, and testimony shows that there was a marked decline in several major factors of the plant valuation between August 1 and December 31, 1921.

Services, main and distributing lines, meters and regulators, were the subject of testimony in this connection, as also was the element of labor entering into these items of plant. Mr. Musson testified (Record p. 27) that there had been a reduction of 10 per cent in pipe such as was used in this plant since August first. He said that meters were down ten per cent, admitting, however, that while he had quotations supporting this statement as to three kinds of meters he

88 did not have any quotations as to the H. & M. meter, of which this company had in service about 11,000 out of 16,000 meters. He said regulators were down ten per cent. He stated that his quotations on pipe prices were furnished by supply houses. Another witness, A. F. Binns, a contracting plumber in Oklahoma City, testified that the price of pipe (Record Page 110) had declined more than was stated by Mr. Musson, and submitted figures as to prevailing prices at which he could buy pipe in Oklahoma City (Binns' Exhibits 1 and 2).

It should be observed that discrepancies between price quotations secured by engineers and those secured by contractors probably are due to the fact that one is a potential customer of a supply house and secures quotations constituting a bid for business, while the other is well known to the dealer making the quotation, not as a potential customer, but as one whose use of the figures given is a matter of importance to other potential customers, the public utilities, who are interested in having the engineer receive and use high rather than low price quotations.

The witness A. F. Binns is in the business of buying and laying gas pipe on both large and small projects, and is an extensive and constant employer of the class of labor used in such work. He testified that he had information as to the costs of pipe and labor as of the present day. The figures submitted in Mr. Musson's testimony (Record Page 27) and Mr. Binns' Exhibits 1 and 2 were as follows:

Size pipe.	Musson (page 27), cents per ft.	Binns' Exhibit 1, retail, cents per ft.	Binns' Exhibit 2, 1 carload, cents per ft.
2 in. ....	20.	17.09	13.31
3 " ....	41.3	35.34	27.50
4 " ....	62.7	53.63	42.26
6 " ....	111.	94.46	74.43
8 " ....	152.	135.50	103.70
10 " ....	195.	176.60	135.91
12 " ....	273.	248.40	191.11

Mr. Binns testified that the figures applied to screw-end pipe and that he could buy plain-end pipe such as is most commonly used in gas construction work, not only generally but in Oklahoma City, at 10 per cent lower cost, and that he could get a further concession of 10 per cent by buying pipe in lots of fifteen cars or more.

This point was made clear in the record as follows: (Record Page 114).

"Mr. Snyder: Suppose you were buying that in as many as fifteen or one hundred carloads at a time. What would you get it for?

A. Possibly 10% discount.

Q. I am afraid I don't know how to ask you this question, but is there some difference between these prices and those heavy couplings?

A. Sure there is a difference of 10%. The pipe is prepared for

welding and screw pipe is different. If it is for welding the prices are 10% lower. But this is for screw pipe.

89 Q. So that the prices for the kind they generally use here is 10% off of this?

A. Yes sir.

Q. Then if you buy in large numbers of carload, you would get a 10% discount off of that?

A. Yes sir.

Q. That is all?

A. If you want to buy that amount of stuff, however, you would go to the mills for it.

Q. This is a quotation to you today from whom?

A. Crane & Company.

Q. They maintain a local distributing house and are large dealers in this kind of stuff?

A. Yes sir.

Q. That is all.

Cross-examination:

By Mr. Reiss:

Q. Did Mr. Georgia, the Manager of Crane & Company, tell you that he would give you 10% discount from this if in fifteen carload lots?

A. Yes sir.

Q. Mr. Georgia told you that himself?

A. Yes sir.

Q. And also 10% off on the pipe for welding?

A. Yes sir.

Q. That's all."

Figures compiled from Mr. Musson's exhibits show that the reproduction of the property involved in this case would require probably four hundred cars of pipe. Reproduction cost of the pipe should be the cost on the most favorable basis at which pipe in large quantities could be procured. An analysis of these figures, therefore, shows that the price of pipe today has declined fully 33½ per cent from the prices used by Mr. Musson, and this percentage of decline will be adopted in arriving at the present value of the property. Mr. Musson's statement that meters have declined 10 per cent will be accepted and the reduction applied to one-third of the meters of the company, the testimony showing that the reduction was not applicable as to about two thirds of the company's meters. Mr. Musson's statement that regulators were down 10 per cent was not questioned.

Testimony was conclusive also as to the decline in the cost of labor between the war-time labor situation and the present day. Mr. Musson stated that he used the scale prevailing in 1920, although the highest in seven years, because he was informed that the company was actually paying that scale. Question as to the cost of the labor

factor in the value of this plant was introduced by the company's attorney in connection with Mr. Musson's testimony on the price of pipe. Questioned by the company's attorneys as to whether the labor factor in pipe line valuation had declined since August first, Mr. Musson disclaimed information on the point, the record, page 43, reading:

"Mr. Reiss: When you state that there is a reduction from the August first price of 18 per cent in the price of pipe, that doesn't mean a reduction of the entire account because labor is a large item in that account?

90 A. Yes sir.

Q. So the 18 per cent does not apply to the account as a whole, but only to the pipe?

A. That's all—just the pipe."

The next morning the State Labor Commissioner testified as to present labor costs. He stated that common labor was being supplied by employment bureaus under his jurisdiction at from 25 to 50 cents per hour, the average being 35 and 40 cents. He stated that track labor was being supplied to railroads and the Oklahoma City street railway at 25 cents per hour. When the Labor Commissioner began his testimony the attorney for the Gas Company stated in the record (Page 101) that his company was now paying 40 cents per hour as against 50 cents which was paid at the time the valuation was made. The same attorney who had shown that a decline of 18 per cent in pipe did not apply to labor now stated that the company's reduction in labor costs amounted in fact to 20 per cent.

Minta De Ford, Office Manager for A. F. Binns, already referred to, testified that she employed labor for Mr. Binns' business and that there was an abundant supply of labor available at from 30 to 50 cents per hour (Record p. 109). Mr. Binns (Page 110) stated that reasonably efficient common labor could be obtained in Oklahoma City at the present time at from 30 to 45 cents per hour, according to class of labor desired, and that ditch diggers or "pick and shovel" men, as he termed the character of labor necessary to lay gas pipes, were plentiful at from 30 to 35 cents per hour. He said he was turning away such labor daily.

From this testimony the Commission concludes that there has been a decline of at least 33½ per cent in the cost of labor since war costs prevailed, which Mr. Musson used, and while the Commission does not find that 30 to 35 cents an hour is a living wage at the present time, it is compelled to apply, in arriving at the replacement cost of this property, the wage scale prevailing generally and available for work of the character involved herein.

With adjustment for cast iron pipe and fittings, which the Commission is advised are not affected by the price decline, and applying the reduced material and labor costs thus developed, the item of service is reduced \$47,920, mains and distributing lines, \$316,221, meters and regulators, \$8,968, and the reproduction value of the property used and useful, paid for by the company as of December

31, 1921, is found to be \$1,820,666. Adding to this amount 20 per cent to cover intangible factors of value which the Commission has heretofore found to be a reasonable allowance for such factors, the complete replacement cost of the gas property in this case is found to be \$2,184,799. The addition last mentioned is intended to cover all reasonable claims for working capital, going concern value and all the usual intangibles contended for in a replacement valuation and those specifically enumerated by the witness, Mr. Musson, as engineering, superintendence, injuries during construction, legal expenses, interest during construction, etc. Depreciating this figure in the same percentage used by Mr. Musson in arriving at his replacement value as of the present time, the figure representing this value becomes \$1,704,143.

### Original Cost.

The Commission has given full consideration to all pertinent facts, figures and theories offered in connection with the valuation of the property involved in this case. It has considered that a very substantial part of this plant has been constructed at costs higher than today's replacement costs, and it has not considered it just or reasonable to deny the utility the right to a return upon such items of property at the value of the investment they actually represent. It has weighed in the balance of reason and fair judgment the relation of a public utility business to business of other character, and has given study to the fact that while public utilities are restricted by law as to their earnings and may not at will ride upon a tide of upward selling prices such as this country witnessed and experienced during and following the war, they may, in a year like that just ended, or, probably, like that just begun, demand their reasonable return upon the present value of their property used and useful in serving the public, while thousands of business concerns of other character are crashing, tottering on the brink of bankruptcy or "getting by" with little or no earning at present and a discouraging prospect ahead.

In the light of these conditions, and others that might be set forth, the Commission has concluded that a fair and liberal rate basing value of the property involved in this case in the original cost as shown by the Commission's engineer (Musson's exhibit No. 1) without depreciation but with certain modifications and amplifications which, for reasons which will be fully set forth, the Commission finds proper.

The original cost found by Mr. Musson as of August 1, 1921, was \$1,846,845. (Record, Cause 4302, p. 38.) This includes certain items of property acquired or constructed from time to time which are not now used or useful in supplying gas to the patrons of the company. These items include furnaces, boilers and accessories, steam engines, water gas sets and accessories, purification apparatus and accessory equipment and works, aggregating in present value the sum of \$27,149. (Record, Cause 4302, p. 30.) Under no theory

of valuation should property not used and useful be included in the valuation for rate making, and this item will be deducted, leaving the cost of the property used and useful, according to Mr. Musson, \$1,819,696.

Certain items proper to be included, but uncertain as to amount, have been included, these items including engineering superintendence, injuries during construction, legal expenses, interest during construction, etc., which the engineer testified (Record, Cause 4302, p. 39) amount to slightly in excess of 20 per cent of the value of the property. In order to arrive at the cost of the physical plant, stripped of items of the character enumerated, the Commission will deduct 20 per cent, or \$293,606, which leaves the figure of \$1,526,090 as representing the "bare bones" of the property August 1, 1921. This figure, however, includes \$37,499 for omissions and contingencies, which must be deducted and leaves \$1,489,641.

This figure, however, it will be remembered, includes the items of plant paid for by patrons of the company, reference to which has been made in connection with the replacement value of the property. Deducting three and one-half per cent on account of investment of this character on which the company is not entitled to a return regardless of the theory of valuation adopted, we have left, as the "bare bones" of the plant, used and useful, paid for by the company, at original cost, the sum of \$1,437,504, as of August 1, 1921. To this is to be added net construction costs from August 1, 1921 to October 31, 1921, amounting to \$30,850, making \$1,431,504. Allowing 20 per cent for intangible factors of value, as was done in developing the final figure of replacement cost, there is to be added \$293,671, which gives us as the final original cost of the property August 1, 1921, the sum of \$1,762,025, and this figure will be and is adopted as the rate basis in this case, subject to readjustment on account of earnings heretofore appropriated but which should have been carried in a depreciation reserve fund the amount of which is hereafter shown.

The Company claims as an operating expense two and one-half per cent on gross earnings paid each year to an engineering and management corporation. This item the Commission, in arriving at the rate fixed, has disallowed, for the reasons that the evidence in this case fails to show any services of value to the local company rendered by such management company. This subject is discussed in the record, Cause 4304, at Page 66.

Just what this 2.5 per cent payment has meant to the patrons of the Oklahoma Gas & Electric Company is indicated by a review of what it has meant to the recipient of this payment during seven years, as shown by the reports to the Corporation Commission. The gross and net revenues reported for the Oklahoma City Division for the fiscal years ended June 30th from 1915 to 1921, inclusive, are as follows:

	Gross.	Net.
Year ended June 30, 1915.....	\$735,979.39	\$151,006.72
“ “ “ “ 1916.....	757,662.32	152,369.78
“ “ “ “ 1917.....	860,925.93	181,055.58
“ “ “ “ 1918.....	1,024,841.47	183,843.96
“ “ “ “ 1919.....	1,679,326.29	327,783.18
“ “ “ “ 1920.....	1,457,749.04	244,084.95
“ “ “ “ 1921.....	1,670,302.78	268,214.93

It was disclosed at this hearing that the payment of 2 per cent was made during all of that period. The amount was charged to operating expenses and does not appear in the net revenues shown above.

The amount of these payments by years was: Year ended June 30, 1915, \$18,399.48; 1916, \$18,940.56; 1917, \$21,523.15; 1918, \$25,621.04; 1919, \$41,983.16; 1920, \$36,443.72; 1921, \$41,757.56; total, \$204,668.67. These amounts deducted from the operating expenses and added to the net earnings would increase the net revenues to the following amounts: Year ended June 30, 1915, \$169,406.20; 1916, \$171,310.34; 1917, \$202,578.73; 1918, \$209,465.00; 1919, \$369,766.34; 1920, \$280,528.67; 1921, \$309,972.49; total, \$1,713,027.77.

The effect of the foregoing would be as follows:

The average annual gross revenues for the seven years ended June 30, 1915 to 1921, inclusive, was \$1,169,535.32. The average net revenue as reported by the company was \$215,479.87. The average two and one-half per cent payments per annum was \$29,233.33. Adding this to the net income reported by the company gives \$244,713.20 per annum. The average investment during the seven years enumerated was \$1,375,330.61. The annual average return for dividends, interest, depreciation and other purposes was 17.8 per cent. During the whole of that period the Commission recognized 8 per cent per annum as a reasonable return for dividends, interest, etc., and 5 per cent per annum as a fair basis upon which to accrue a fund for depreciation, obsolescence, etc., making a total recognized to be fair and equitable of 13 per cent per annum. This would yield a return during the seven years stated of \$1,251,550.46. Deducting that amount from the actual returns as reported by the company leaves a surplus of \$256,808.64. Adding to that the two and one-half per cent of gross revenues would bring the surplus to \$461,477.31. The depreciation actually collected by the company for the purpose of maintaining the integrity of its original investment amounted to \$481,365.72 during the seven-year period. This will be deducted to develop the final rate base, and the same becomes \$1,280,660.

The values used in the foregoing computations showing the effect of the 2.5 per cent payment during the seven years were arrived at by taking the original reports of the company as of — 30, 1914, and adding thereto their completion reports from year to year. From the investment thus reported all overheads such as engineer-

ing, superintendence, interest during construction, etc., were eliminated and in lieu thereof 20 per cent was added to the actual physical value of the property and the cost of its installation. These values have no relation to the value arrived at as a rate base in this case.

The foregoing figures give assurance that operation of the property involved in this case, has, during the years past, been amply profitable to completely amortise all items of plant which have been excluded from consideration as a part of the earning property because not now used and useful in furnishing gas to the public. The same figures show that ample funds for the maintenance of this property in good condition have been available heretofore, and that leakage of two million cubic feet per year per mile of three-inch main equivalent (or 20 per cent as shown by the testimony should not exist and should not hereafter be permitted; and hereafter leakage in excess of one million cubic feet per mile of three-inch main or its equivalent (10 per cent) will be held by the Commission to be excessive.

93 With an operating ratio of about 80, which this company has enjoyed heretofore, a payment of 2.5 per cent gross earning is 12.5% of the net, and can be defended only by a clear and definite showing of value given which is not available in the record in this case.

The payments made to the engineering and management company by the Oklahoma Gas & Electric Company in years past, disclosed in this case, have, as the Commission's investigation of the records demonstrates, made the return on the actual cost of the property from year to year, with due allowance for intangible values, more than a reasonable one. The Commission cannot permit this practice to go longer unrestrained, and will not permit this charge to be made hereafter at least until such time as it can be shown to be reasonable and just.

Summarizing as to values: as heretofore shown, from the present value of the property used and useful, has been deducted that part of the property which has been paid for by patrons and in which the company has no investment, and depreciation that has been allowed and earned but appropriated to their own use and benefit by the owner of the property, either by the payment of excess dividends, or (more likely) by paying for additions and betterments to the property. If, as has been assumed likely, this money has been put into additions and betterments, then it has been again included in the rate base on which to draw further dividends. If it has been returned to the owner as excess dividends then it no longer is invested in the property, and in neither event would the public be entitled to continue to pay dividends thereon. All calculations appearing hereinafter involving a rate base are based upon this value of \$1,206,625, the Commission recognizing this amount as that which the Company still has in the property and which has not been returned to it.

### Cost of Financing.

During the year 1921 a program of refinancing the Oklahoma Gas & Electric Company was accomplished, according to the testimony of the manager of the rate department of the engineering and management corporation, as a result of which interest charges become a burden upon the operation of this company, to which attention must be directed. The problem before the Commission is best stated by the witness himself at page 91 of the record. In response to a request by the company's attorney that the witness develop the cost of money to the company at the present time the witness said (Record p. 91, 92 and 93):

"A. Early in 1921, the Oklahoma Gas & Electric Company found it necessary to refinance in a large measure for itself and the Muskogee Gas & Electric Company, and it put out its refunding mortgage fund of the par value of \$6,000,000, and it also put out its ten year notes amounting to two and a half million dollars, making a total of eight and a half million dollars. The discounts and expenses incident to this financing amounts to one million three hundred and three thousand one hundred and forty-two dollars and seventy-one cents (\$1,303,142.71). The net amount realized from the issues of securities was \$7,196,867.19. The bonds were 7.5% bonds and the notes bear 8%. The annual interest on the bonds at 7.5% amounts to \$450,000.00. The annual interest on the notes amounts to \$200,000.00 so that the total annual interest charges on these securities amounts to \$650,000.00. The amount of discount and expenses spread over a period of twenty years amounts to \$65,157.14 per year, making the total of annual interest on this financing covering both the annual interest charges and the annual portion of discounts and expenses, \$715,157.14. The total annual interest charges amounting to \$650,000.00 is equivalent to 9.3% upon the amount realized from these issues. The total annual interest charges with the annual portion of the discount and expenses of financing amounts to 9.94% of the amount realized from these issues.

In reply to Chairman Russell's question as to what the purchases of the securities were, the witness answered:

A. As far as the question of the Chairman is concerned, I am unable to tell the course through which these securities pass. All I know is that the records show that that is the amount realized, as I have stated. The amount taken by the different financial houses who entered into these transactions of financing these properties or furnishing the money upon those securities, I am unable to say about.

94 Chairman Russell: The Commission thinks the records should show these things, and that this was a necessary transaction, and that these securities passed into the hands of adverse holders and not to the holding companies. We realize financ-

ing is being done on a great deal better terms today than at that time, and if that is not true there should be some testimony to remove that idea.

A. Of course this particular financing had to be done at that time, and I believe that that was generally understood that the financing could not at that time be deferred. No one knew then that it would be better now.

Mr. Snyder: Conditions are better now than then aren't they?

A. Generally they are.

Q. Who underwrote those issues if you know?

A. I know there were a number of financial houses that entered into the syndicate to take these securities, but how much of them each took I am unable to say."

Questioned as to whether this refinancing program had not been put through at the most disadvantageous time that has existed in years the witness stated that it was at least within a short time of the worst period. Later in the hearing (Record page 158) this matter was again referred to by counsel as follows:

Mr. Snyder: You will perhaps agree that the mortgage or Deed — Trust under which your recent financing was done, has a provision——

Mr. Reiss: That instrument speaks for itself, and I think it should be made a part of the records.

Mr. Snyder: I didn't know that it was a part of the records.

Mr. Reiss: It has or we will make it so.

Mr. Snyder: I want to know whether your bonds have a provision whereby they can be retired.

Mr. Reiss: That Deed of Trust has this provision under certain conditions.

Mr. Snyder: So in the event money rates decrease you can save the Gas Company the interest you are paying on those bonds?

Mr. Reiss: The agreement speaks for itself, and it is in the record."

The letter and the agreement referred to are not in the record. The attorney for the company referred to them frequently as in the record but the documents were not offered in evidence.

95 A suggestion that they be offered was made but counsel for the Oklahoma City Chamber of Commerce objected as there was no opportunity to cross examine the writer of the letter. (Record page 98.)

In the face of the foregoing testimony relating to the refinancing program the Commission cannot approve, as a proper burden upon the public that this company serves, the tremendous interest charges claimed. Without definite information on this point the Commission is unable to determine what interest charges, if any, do in fact constitute a proper charge against operation of the Oklahoma company, and cannot approve such charges as a proper operating expense.

Further, the Commission takes judicial knowledge of the fact that any necessary program of refinancing can be put through at the present time on terms much more favorable than were accepted in the program above referred to, that even were the profits on the securities marketed in 1921 going wholly to adverse holders the Commission would not be justified in permitting such program to stand at the present time, in view of the admission of the company's attorney that the securities issued are subject to recall and reissue whenever more favorable terms are to be had.

### Taxes.

There is charged against the property of the Oklahoma City division of this company, according to the monthly reports for the twelve months ending October 31, 1921, a total amount for taxes in the sum of \$64,219.00. In connection with this case and in connection with Cause No. 4142, the valuation case, the Commission has endeavored to secure information as to the character of these taxes,—to determine whether or not the amount includes federal income taxes, and, if so, how much, the Commission being of the opinion that federal income taxes are not a proper charge against operation, but that a corporation, like an individual, is obligated to pay the income tax out of net income. No information upon which a conclusion on this point could be based has been furnished and the Commission can not, from information available in this record, determine what allowance should be made for taxes properly chargeable to operation of the property. Should the full amount claimed be allowed, the necessary earning to compensate therefor would be 5.5 per cent. While the Commission does not approve the amount in full, it is of the opinion, and finds, that the rates prescribed herein will prove ample to take care of the necessary proper allowance for taxes.

### Leakage.

As heretofore stated, the Oklahoma Gas & Electric Company, prior to the promulgation of Order No. 1886 by this Commission was buying gas from the Oklahoma Natural Gas Company under what was known as a proportional contract.

96 The Oklahoma Natural Gas Company delivered the gas to the Oklahoma Gas & Electric Company at the town border of Oklahoma City and accepted in payment therefor two-thirds of the gross collections of the Oklahoma Gas & Electric Company for gas sold for domestic uses and three-fourths of the gross collections for gas used for industrial purposes. Under this arrangement the burden of gas unaccounted for, usually referred to as leakage, fell upon the Oklahoma Natural Gas Company, notwithstanding the fact that it had no responsibility for or control over the lines conveying the gas from the city border to the consumer.

Under the city gate rate plan established by Order No. 1886 the gas is measured at the city gate and paid for by the Oklahoma Gas

& Electric Company at a specific rate per M cu. ft. This throws the entire burden of the cost of unaccounted for gas upon the Oklahoma Gas & Electric Company, and this factor has a substantial bearing upon the result of operation of the business of this company. The superintendent of the gas department of this company testified (Record Page 85) that the unaccounted for gas in the Oklahoma City division for the year ending August 31, 1921, was 20.5 per cent of the gas received at the city gate. He stated that the same figures for the year ending September 30th would be 21.8 per cent; for the year ending October 31st, 21.3 per cent, and for the year ending November 30th, 21.8 per cent. It is fairly well established, if these figures are dependable, that the loss of gas in Oklahoma City at the present time is not less than 20 per cent of the gas received at the city gate.

The Kansas Public Utilities Commission was stated in testimony in this case to have found that a reasonable standard of leakage would be 200,000 cu. ft. per year per mile of 3 inch main or its equivalent. (Record Page 147).

The Commission's gas engineer, while not a witness in this case, has testified in other cases that in his opinion a sufficiently low standard of leakage would be 500,000 cu. ft. per year per mile of 3 inch main, or its equivalent, and it was agreed by counsel for the company (Record Page 126) that the record should show that were this witness available he would so testify, the company not agreeing, however, to the correctness of his judgment in the matter. The leakage testified to by the company's gas superintendent is 2,000,000 cu. ft. per mile of 3 inch main or ten times as great as that said to have been approved by the Kansas Commission and four times as great as that approved by this Commission's engineer. (Record Page 151.)

Without a survey of the situation in Oklahoma City to determine the condition of the plant and cost of repairs to reduce leakage it is impracticable to establish an arbitrary maximum limit to govern the allowance for gas unaccounted for. The rate to be fixed by the Commission in the present case, will, however, compensate the company for loss of gas shown as being lost at this time, and is prescribed with the definite provision and requirement that revenues in excess of a return of 8 per cent on the property be carried in a depreciation reserve account, which shall be fully accounted for at all times and against which shall be charged such items of expense involved in the correction of the leakage situation as may not be properly and consistently charged to current maintenance.

#### Depreciation Reserve.

Testimony shows (Record Page 156) that while the Company has on its books what it terms a depreciation reserve account, it maintains no depreciation reserve in fact and the account has not been carried regularly, repair or maintenance bills not being charged to this amount but to current expenses. The Commission will require henceforth that a depreciation reserve account be carried and

maintained, all replacements being charged against such account and all charges against and balances in said account being reported to the Commission regularly in current reports of revenues and expenses.

### Computation.

For the purpose of determining the results of operation of the Oklahoma Gas & Electric Company in Oklahoma City, Yukon, and Britton, known as the Oklahoma City division, and which have been included in the engineers' valuations of the Oklahoma City division property, investigation has been made into the reports of revenues and expenses furnished by the company for the twelve months ending October 31, 1921. The reports used were the monthly report for October, 1921, carrying figures for that month and for the corresponding month in 1920 and for the accumulative period, January to October inclusive, in 1921 and 1920, and the monthly reports for December and November 1920.

In making computations involving the total amount of gas sold the quantity of gas has been determined by applying the rate at which the same was sold to the amount of money received for the prevailing rate. From November 1, 1920, to March 31, 1921, the rate for domestic gas was 48 cents, for so-called special gas 40 cents and for industrial gas 35 cents. During April, May and June, 1921, the domestic rate was 40 cents, the special rate 32 cents and the industrial rate 25 cents. During July, August, September and October, 1921, the domestic rate was 42 cents and the industrial rate 25 cents. There was no special rate in effect during these months.

It would seem reasonable that in estimating gas to be sold in 1922 increased sales due to increase in number of consumers be taken into consideration, this factor being  $5\frac{1}{2}$  per cent and being developed by determining the average increase in consumers during the twelve months' period November 1920 to October 1921 inclusive. The number of consumers at the expiration of the twelve months' period exceeded the number a year previous thereto by more than 10 per cent, but the average number only during the entire twelve months was used. It can be assumed that at least this number will be served throughout 1922. No consideration should be given the fact that the number will increase during this year, such increase being allowed to compensate the company for increase in the value of its property during the same period. Consumers November 1, 1920, numbered 17,235. The number October 31, 1921, was 18,963. The number developed by averaging the number of the twelve months respectively was 17,966. However, notwithstanding the increase in number of consumers during 1921, there was a slight decrease in domestic gas sales compared with 1920. While the Commission fully believes this decrease to be due to the mild winter of 1920-1921 compared with 1919-1920 this highly probable source of additional business and increased revenue will be disregarded in computing the probable results of operation in 1922 as the increased

consumption which might be assumed is likely to be affected by the increased rate.

Conclusions as to the result of operation in 1922 at the rate to be prescribed herein have been developed on the basis of leakage amounting to 10 per cent of the gas received, or one million cubic feet per mile of 3 inch main, assuming that industrial business in 1922 will be the same as during the twelve months' period 98 investigated. Estimates also have been made using 20 per cent leakage and 10 per cent leakage, assuming that there will be no industrial business whatever. Domestic gas purchases in 1921 amounted to 2,328,244 M cubic feet. Domestic gas purchases for 1922, allowing for the fact that with leakage of ten per cent the sales are but nine-tenths of the purchases, will be 2,586,937 M cubic feet and will cost, at 25 cents per M the sum of \$646,734. The part of this gas that is sold, which will be 2,328,244 M cubic feet, will bring, at 45 cents per M \$1,047,709.80.

Manufacturing gas, according to the same processes of computation, will cost, at 20 cents per M \$145,853.00 and will bring 25 cents, \$164,084.00.

Special gas, so-called, which sells at the domestic rate, being industrial gas used up to a certain quantity, will cost \$86,260.00 and will bring \$139,742.00.

Thus the cost of all gas for 1922, assuming 10 per cent leakage, will be \$878,847, and the gross revenue will be \$1,351,536.

Operating expenses are reported to the Commission under three groups of accounts, designated "plant expenses," "distribution and maintenance expenses," and "general expenses," respectively. Plant expenses, as applied to the property involved in this case, consist of the cost of gas only. The other designations are self-explanatory.

Operating expenses aside from the cost of gas will be, assuming (which should not be true) that operating costs will be as high as in the twelve months ending October 31, 1921, \$170,595.86. From this amount, however, is to be deducted \$33,375.73, being two and one-half per cent of gross earnings during the twelve months period, paid to the Engineering and Management Company and not allowed as an operating expense by the Commission, which leaves \$137,220 as the operating expense aside from cost of gas and makes the total operating expense, including cost of gas, \$1,016,067. Total revenues as already developed will be \$1,351,536, which leaves \$335,469 as the net operating revenue, which amount will be 26.2 per cent on the rate basing valuation of \$1,206,625. This amount will pay in full the taxes as charged, at 5.3 per cent of the valuation, whether or not it is in full a legitimate charge, and leave 20.9 per cent return for interest and depreciation.

By identical processes of computation it will be found that if, as some of the gas company representatives profess to fear, industrial business amounts to little or nothing in 1922, net operating revenue for the year for domestic business alone will be found to be \$263,755, and the return for interest and depreciation after paying in full taxes as charged this year 15.2 per cent.

Similarly, if it be assumed that leakage is to be in 1922 as it is

testified to have been during the past year, 20 per cent, and that there will be no industrial business, identical processes of computation will show the net operating revenue on domestic business alone to be \$182,913, and the return available for interest, depreciation and taxes, 15.1 per cent, or, after paying the taxes in full as above, 8.9 per cent.

But there is today, and will doubtless continue to be, industrial business in a substantial amount, and the Commission believes the rates herein prescribed will be ample to provide, not only for dividends but 5 per cent depreciation reserve upon the full value of the property after the payment of 8 per cent upon the fair value of the property, less the amount shown to have been already appropriated and used by the owners. The above rates for dividends and depreciation are hereby approved and allowed.

99 As already stated, the record shows that the property involved in this case has been and is being maintained in condition to give service, all replacements and charges properly chargeable against depreciation reserve having been taken care of out of current revenues. The company has been at liberty at all times to have carried a depreciation reserve in fact and to have made a complete and clear showing in support of the necessity therefor. But it has elected instead to handle the matter as has been stated. In view of this fact a consistent or valid claim can scarcely be made that an allowance for depreciation for the twelve months ending October, 1921, should be made. However, the testimony shows industrial business to be improving and the rate employed in the foregoing computations is more than sufficient to care for legitimate charges to operation, and, the Commission expects, will yield even under the most unfavorable conditions suggested, a modicum of return to be carried into the depreciation reserve account during the coming year, which, if efficiently handled, should show substantial progress toward an operating result less shrouded in uncertainty.

#### Order.

Wherefore, the Commission being fully informed in the premises and having given due consideration to all the facts in the record,

It is ordered that rates for gas in the City of Oklahoma City, Yukon, Britton, Bethany and Putnam City, shall be 45 cents per thousand cubic feet for gas used for domestic purposes and 25 cents per thousand cubic feet for gas used for industrial purposes; provided that the first 500,000 cubic feet of gas for industrial purposes shall pay the domestic rate.

It is further ordered that a depreciation reserve account be established forthwith by the Oklahoma Gas and Electric Company and that all amounts herein allowed and earned for depreciation over and above 8 per cent on the rate base be credited to said account, and that complete accounting for all charges against and balances in said reserve account be made to the Corporation Commission of Oklahoma henceforth in current reports of revenues and expenses.

It is further ordered that so long as a city gate rate of 35 cent-per thousand cubic feet is imposed upon the Oklahoma Gas & Electric Company by authority of the United States District Court or other Federal Court, thirteen cents per thousand cubic feet may be collected from the domestic patrons of said company in addition to the domestic rate herein prescribed subject to refund as per previous order and bond.

Supplemental orders are in preparation prescribing rates for Enid, El Reno and Muskogee, and will be announced as soon as completed.

This order shall be in full force and effect as of and from January 1, 1922.

Done at Oklahoma City, Oklahoma, this the 18th day of January, 1922.

CORPORATION COMMISSION OF  
OKLAHOMA,  
CAMPBELL RUSSELL,  
*Chairman.*  
ART. L. WALKER,  
*Commissioner.*

Attest:

G. F. SMITH,  
*Secretary.*

100

EXHIBIT F.

In the Supreme Court of the State of Oklahoma.

No. 12918.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, Plaintiff in  
Error,

vs.

STATE OF OKLAHOMA and THE CORPORATION COMMISSION OF OKLA-  
HOMA Defendants in Error.

*Order.*

Now on this, the 25th day of January, 1922, comes on to be heard the application of the Oklahoma Gas and Electric Company, a corporation, for a supersedeas and an order increasing the rate fixed by order No. 1889 of the Corporation Commission made in cause No. 4302, on July 1st, 1921, in which order the rate to be charged to consumers of gas in the City of Oklahoma City, as in said order provided, And,

Whereas, it appearing that this application for supersedeas was filed in this court on December 17, 1921, on which day this court, in consideration of same, and among other things, ordered that the cause be remanded to the Corporation Commission to be further investigated by the Commission and reported upon by the court. And,

101       Whereas, it now appears that in pursuance to said order the Corporation has made its report to this court, fixing a rate of 45 cents per thousand cubic feet with the further provision that so long as said gate rate of 35 cents per thousand feet is in effect by virtue of order of Federal Court, 13 cents per thousand cubic feet may be collected subject, however, to refund as per previous order and bond, making a total rate of 58 cents per thousand cubic feet at this time. And,

Whereas, the application does not in any way or in any manner attack the finding and opinion of the Corporation Commission filed herein on January 23, 1922, and no evidence being offered to show that said finding and orders are unreasonable and unjust, such finding will be presumed to be correct, and nothing to the contrary being shown, it is therefore ordered, adjudged and decreed that said application for supersedeas, under the facts herein, and for the increased rate to be charged as in said application set forth, that said application be and the same is hereby denied.

JOHN H. PITCHFORD,  
*Acting Chief Justice.*

Endorsed: Filed in District Court on January 26, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

102       In the District Court of the United States for the Western District of Oklahoma.

*In Equity.*

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma; S. P. Freeling, Attorney General for the State of Oklahoma; The City of Oklahoma City and Its Attorney, C. H. Ruth; The City of Muskogee and Its Attorney, W. P. McGinnis, The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Order to Show Cause.*

On this the 27th day of January, 1922, it is ordered on motion of complainants, due cause appearing, that the defendants and each of them be and appear before the above entitled court, sitting in the Western District of Oklahoma, at Oklahoma City, Oklahoma, on the 15th day of February, 1922, at the hour of ten o'clock in the forenoon of said day, then and there to show cause, if any they have,

why they and each of them should not be enjoined and restrained in the manner prayed.

It is further ordered by the court that a copy of this order be served on said defendants and each of them forthwith, and also upon the Governor and Attorney General, five days before said hearing.

JOHN H. COTTERAL,  
*Judge.*

Endorsed: Filed in District Court on January 28, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

103 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY et al., Complainants,

vs.

CORPORATION COMMISSION et al., Defendants.

On this 6th day of February, 1922, it is ordered that plaintiff have leave to file second supplemental bill herein, instanter.

104 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE Gas & Electric Company, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Second Supplemental Bill of Complaint.*

Come now complainants, the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company, in the above entitled cause and file this their Second Supplemental Bill therein, and refer to their First Amended Bill of Complaint filed in said cause and incorporate the same by reference as fully as though said Amended

Bill of Complaint was set out in full herein, and further respectfully show to the court:

That on the 17th day of December, 1921, complainants herein filed in the Supreme Court of the State of Oklahoma, their applications for supersedeas in causes No. 12,918 and No. 12,919, in which they prayed that the said Orders No. 1889 and No. 1890, of 105 the Corporation Commission be superseded pending the appeals to the Supreme Court of Oklahoma, and that these complainants be allowed, pending said appeals, to charge the schedule of rates therein specified; a copy of which said applications for supersedeas are hereto attached, marked Exhibits "A" and "B" and referred to as part of this Supplemental Bill.

That said applications came on for hearing before the Supreme Court on the 17th day of December, 1921, at which time said Supreme Court entered its orders finding that conditions had materially changed and that the interest of justice required that said causes be remanded to the Commission to be further investigated and reported upon to the Supreme Court, and directing that said investigation should be had before the Corporation Commission, and that the said Commission report its findings and conclusions in each of said causes to the Supreme Court within fifteen days from said date, and that in the meantime further action on the supersedeas applications be continued; a copy of which said orders are hereto attached, marked Exhibits "C" and "D" and made a part of this Second Supplemental Bill.

Complainants allege that pursuant to the orders of the Supreme Court the defendant Corporation Commission of the State of Oklahoma, set said causes for hearing on the 30th day of December, 1921, and that said hearings were commenced on said date and concluded on the 31st day of December, 1921, at which time the Commission announced that it would take said causes under consideration and file its orders within a few days thereafter.

That on the 3rd day of January, 1922, said Corporation Commission secured from the Supreme Court of Oklahoma an order extending the time theretofore granted by the Supreme Court in which to file said reports in said Supreme Court to January 18, 1922.

Complainants say that on the 21st day of January, 1922, the Corporation Commission filed its findings of fact, opinion and 106 order fixing the gas rate in the Oklahoma City division, consisting of the City of Oklahoma City and the towns of Bethany, Britton, Yukon and Putnam City; a copy of which said findings and order of the Corporation Commission is hereto attached, marked Exhibit "E" and made a part hereof.

Complainants further show to the court that on the 23rd day of January, 1922, the Supreme Court of the State of Oklahoma gave the Commission a further extension of time until January 31st, 1922, in which to file its findings and conclusions as to the other cities and towns affected by said investigation and the orders of the Supreme Court.

Complainants say that on the 27th day of January, 1922, the Corporation Commission filed its findings of fact, opinion and order fix-

ing the gas rate in the cities of Enid and El Reno; a copy of which said findings and order of the Corporations Commission is hereto attached, marked Exhibit "E-L" and made a part hereof.

Complainants further say that in the order above referred to as Exhibit "E," filed in the Supreme Court of Oklahoma on the 21st day of January, 1922, the rates authorized by said Corporation Commission for gas in the City of Oklahoma City and the towns of Bethany, Britton, Yukon and Putnam City were fixed at forty-five (45¢) cents per thousand cubic feet for gas used for domestic purposes and at twenty-five (25¢) cents per thousand cubic feet for gas used for industrial purposes, with the proviso that the first five hundred thousand (500,000) cubic feet of gas should be sold at the domestic rate; and that in the order above referred to as Exhibit "E-1" the rates authorized by said Corporation Commission for gas in the City of Enid were fixed at fifty (50¢) cents per thousand cubic feet for gas used for domestic purposes and at twenty-five (25¢) cents per thousand cubic feet for gas used for industrial purposes, and the rates authorized by said Corporation Commission for gas in the City of El Reno were fixed at fifty-five (55¢) cents per thousand cubic feet for gas used for domestic purposes and twenty-five (25¢) cents per thousand cubic feet for gas used for industrial purposes, with the proviso that the first five hundred thousand (500,000) cubic feet shall be sold at the domestic rate; and it was further provided in each of said orders that so long as a city gate rate of thirty-five (35¢) cents per thousand cubic feet is imposed upon the Oklahoma Gas & Electric Company by authority of the United States District Court for the Western District of Oklahoma, or other federal court, thirteen (13¢) Cents per thousand cubic feet may be collected from domestic patrons of said Company in addition to the domestic rate therein prescribed, subject to refund as per previous order and bond.

Complainants further say that by said orders said Commission deprives the complainant, Oklahoma Gas & Electric Company, of any return whatever on a large part of its property, and that the rates for gas now in force in said cities and towns are so unreasonably low as to be noncompensatory, unremunerative and confiscatory, thereby depriving these complainants of property without due process of law and denying them the equal protection of the laws in contravention of the 14th Amendment to the Constitution of the United States.

Complainant, the Oklahoma Gas & Electric Company, states that on the 24th day of January, 1922, it renewed its application to the Supreme Court of the State of Oklahoma for an order superseding the rates then in force in the Oklahoma City division, and that said application *was* denied; a copy of the order denying said application is hereto attached, made a part hereof and marked Exhibit "F"; and that on the 6th day of February, 1922, it renewed its application to the Supreme Court of the State of Oklahoma for an order superseding the rates then in force in the Cities of Enid and El Reno, and that said application was on said date denied; a copy of said order denying said application is hereto attached, made a part hereof and marked Exhibit "G."

Wherefore, complainants repeat the prayer of their original bill for a temporary and permanent injunction, and pray the court for a temporary order enjoining and restraining the defendants in this cause and each of them from in any wise enforcing the schedule of rates now in effect in Oklahoma City, Britton, Bethany, Yukon, Putnam City, Enid, El Reno and Muskogee, and from interfering with the complainants in their right to establish other higher and different rates in said cities and towns, and restraining and enjoining the defendants from taking any proceedings before any tribunal in the State of Oklahoma seeking in any wise to enforce said rates or to interfere with complainants in their right to install and collect from their consumers other and different rates, and complainants offer to submit to such conditions as the court may impose upon the granting of said temporary injunction.

JOHN H. ROEMER,  
ROBERT M. CAMPBELL,  
D. T. FLYNN,  
ROBERT M. RAINEY,  
STREETER B. FLYNN,  
*Attorneys for Complainants.*

STATE OF OKLAHOMA,  
*County of Oklahoma, ss:*

J. F. Owens makes solemn oath and says: I am Vice President and General Manager of the complainant, the Oklahoma Gas & Electric Company; that I have read the foregoing Supplemental Bill of Complaint and that the matters and things therein stated are true; that the reason this complaint is not verified by the complainant is that the Oklahoma Gas & Electric Company is a corporation and I am the Vice President and General Manager of said corporation and am verifying this complaint for and in its behalf; that all matters therein stated are based on my personal knowledge of the affairs of said complainant and are true and correct.

J. F. OWENS.

Subscribed and sworn to before me this 6th day of February, 1922.  
[SEAL.]

A. H. MAHNER,  
*Notary Public.*

My Commission Expires Mar. 3, 1925.

100 In the Supreme Court of the State of Oklahoma.

No. —.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, Appellant,  
vs.

THE STATE OF OKLAHOMA and THE CORPORATION COMMISSION OF  
THE STATE OF OKLAHOMA, Appellees.

*Application for Supersedeas.*

Comes now the Oklahoma Gas and Electric Company, a corporation organized under the laws of the State of Oklahoma, appellant herein, and respectfully shows to the Court that on the 29th day of June, 1921, it filed an application with the Corporation Commission praying for an increase in its gas rates wherein it set forth that the then existing schedule of gas rates theretofore prescribed by the Corporation Commission, and charged by your appellant, was wholly inadequate and did not afford it a fair and adequate return upon the value of its property used and useful in discharging its duties in furnishing gas to the public; a copy of which said application is hereto attached, marked Exhibit "A," and made a part hereof. Appellant prayed that the Corporation Commission make an order allowing it to charge a rate to domestic consumers as follows:

Oklahoma City, 60 cents per thousand cubic feet;  
El Reno, 88 cents per thousand cubic feet;  
Enid, 65 cents per thousand cubic feet.

On July 1st, 1921, the Commission entered its order, being Order No. 1889, denying appellant's application, but allowed it a temporary increase of 2 cents per thousand cubic feet in Oklahoma City, and 5 cents per thousand cubic feet in Enid and El Reno.

110 Appellant respectfully shows to this Court that it has appealed from said Order No. 1889 of the Corporation Commission, to this court, and said appeal has been allowed, and that it also has applied to the said Corporation Commission to supersede said order, which application the Corporation Commission has denied.

Appellant further shows to the court that the property used and useful in delivering natural gas to its consumers in the cities and towns of Oklahoma City, Enid, and El Reno, is not less than the following, to-wit:

In the City of Oklahoma City .....	\$3,269,828.00
In the City of El Reno .....	425,835.00
In the City of Enid .....	750,678.00

Appellant further shows to this Court that the Corporation Commission of the State of Oklahoma has never fixed a valuation of its property used and useful in its said business of furnishing gas to the

public, though your appellant has had on file a petition praying for said valuation for more than one year, and on which application the Commission held repeated hearings, and finally closed the matter of hearings on the same, on July 8th, 1921, but since which time the Commission has not made any finding whatsoever as to said valuation.

Your appellant further shows to the Court that said Order No. 1889 was made by the Corporation Commission without a hearing, and without any investigation as to the merits of appellant's application for increased rates, and that it has never granted appellant a hearing on the said application filed on the 29th day of June, 1921.

Appellant alleges that the rates it is allowed to charge under said Order No. 1889 of the said Corporation Commission are wholly unremunerative and do not give it a fair return on the value of its property used and useful in its said business, and that the  
111 said Order fixing the said rates *it* therefore confiscatory, and takes appellant's property without due process of law, contrary to the Constitution of this State, and the Constitution of the United States.

Your appellant further shows that it purchases the gas which it distributes in the cities and towns above named, from the Oklahoma Natural Gas Company, under Order No. 1886 of the Corporation Commission, known as the Gate-rate Order, by which order appellant is required to pay said Oklahoma Natural Gas Company the sum of 25 cents per thousand cubic feet for the first five hundred thousand cubic feet of gas sold to each consumer, and so purchased by it from the Oklahoma Natural Gas Company, and 20 cents per thousand cubic feet for all gas purchased by it from said Oklahoma Natural Gas Company and sold to each consumer in excess of said first five hundred thousand cubic feet.

Your appellant further shows that the cost of gas under said Gate-rate Order, since July 1st, 1921, to September 30th, 1921, is as follows:

	July.	August.	September.
Oklahoma City Division, including Oklahoma City, Britton, Bethany, and Yukon .....	\$34,127.50	\$32,433.50	\$33,810.75
El Reno .....	4,233.75	4,180.75	4,310.50
Enid .....	5,502.75	5,429.00	5,733.25

and that the cost of gas, as above stated, is largely in excess of the cost of gas under the contracts existing between the Oklahoma Gas and Electric Company and the Oklahoma Natural Gas Company prior to the issuance of said Order No. 1886 by the Corporation Commission cancelling said contracts and substituting therefor the said gate rate.

Your appellant alleges that had the so-called gate rate under the Corporation Commission's order No. 1886 been in force and effect for the twelve months beginning October 1st, 1920, and ending

September 30th, 1921, and had the present rates to consumers in Oklahoma City, Britton, Bethany and Yukon been in effect for the same period of time, your appellant would have had only \$24,838.00 available for depreciation, amortization and return on the property used and useful in distributing gas in the said City of Oklahoma City, and the towns of Britton, Bethany and Yukon, and your appellant would have had only \$5,537.00 available for depreciation, amortization and return on the property used and useful in distributing gas in the city of Enid, and would have had \$10,639.00 less than nothing, for available for depreciation, amortization and return on the property used and useful in distributing natural gas in the city of El Reno.

Your appellant alleges that if the same volume of business could be retained for the next twelve months as was done during the twelve months period ending September 30th, 1921, under Order No. 1886 of the Corporation Commission and the rates now in force and effect, it would have available for depreciation, amortization and return on the property used and useful in distributing natural gas in the cities and towns hereinabove referred to as a result of said twelve month period of operations, the following amounts:

Oklahoma City Division, including Oklahoma City, Britton, Bethany and Yukon.....	\$24,838.00,
Enid .....	5,537.00,
El Reno, a deficit of.....	\$10,638.00.

In other words, appellant alleges that for the year's operation the gross receipts for the sale of gas in the Oklahoma City Division would exceed the cost of gas and operating expenses in the sum of \$24,838.00, and in the Enid division would exceed the cost of gas and operating expenses in the sum of \$5,537.00, and in the City of El Reno, the operating expenses and cost of gas would exceed the gross receipts from the sale of gas in the sum of \$10,638.00.

Your appellant further shows to the Court that the Oklahoma Natural Gas Company did, on the 16th day of December, 1921, obtain from the United States District Court for the Western District of Oklahoma, a temporary restraining order, enjoining the said Order No. 1886 of the Corporation Commission, and has, or will immediately, place in effect a gate rate of not less than 35 cents per thousand cubic feet of gas, which will greatly increase the cost of gas to this appellant and thereby greatly diminish its revenues and render the rates that it is now permitted to charge under the order of the Corporation Commission, still more inadequate and unremunerative and completely confiscatory, and your appellant alleges that it will therefore be necessary for this court to immediately put into effect the following schedule of rates to consumers in order to give appellant an adequate and fair return upon the value of its property used and useful in its business of furnishing gas in said cities and towns, to-wit:

Oklahoma City Division, Including Oklahoma City, Britton, Bethany and Yukon.	The first 500 M cubic feet per month, 75¢ per M cubic feet, net; Excess of 500 M cubic feet per month, 25¢ per M cubic feet, net.
Enid .....	The first 500 M cubic feet per month, 80¢ per M cubic feet, net; Excess of 500 M cubic feet per month, 25¢ per M cubic feet, net.
El Reno .....	The first 500 M cubic feet per month, 80¢ per M cubic feet, net; Excess of 500 M cubic feet per month, 25¢ per M cubic feet, net.

Your appellant further shows to this court that this cause cannot be prepared, submitted to and decided by this court for several months, and pending a decision by this court your appellant is being subjected to a confiscation of its property in violation of the Constitution of this State, and the Constitution of the United States, and unless it is granted a supersedeas herein and permitted to

114 charge the rates prayed for herein, it will suffer great and irreparable damage.

Wherefore, pending this appeal, appellant prays this court to supersede said order of the Corporation Commission and allow it to charge the schedule of rates applied for herein, and hereby offers to comply with such terms as may be imposed by this court, including the giving of a bond in such sum as may be fixed by this court, conditioned that it will refund to its customers the difference between the rates charged and collected by it and the rates which may be fixed by this court on appeal, and your appellant offers to keep its books so as to give the necessary information on which to make any such refund, if it becomes necessary, and to comply with any and all other conditions prescribed by law or by this court.

OKLAHOMA GAS AND ELECTRIC  
COMPANY,

By ———, *Attorney.*

STATE OF OKLAHOMA,  
Oklahoma County, ss:

W. R. Emerson, being duly sworn, says that the facts stated in the foregoing application are true; that he is Treasurer for the Oklahoma Gas and Electric Company, and is making this affidavit from his own personal knowledge, and for and on behalf of the Oklahoma Gas and Electric Company.

Subscribed and sworn to before me this — day of December, 1921.

\_\_\_\_\_  
Notary Public.

My commission expires — —, —.

115 To the Attorney General of the State of Oklahoma:

Please take notice that the foregoing application for supersedeas will be presented to the Supreme Court of the State of Oklahoma at nine o'clock A. M., on the 17th day of December, 1921, or as soon thereafter as counsel can be heard.

\_\_\_\_\_  
Attorneys for Appellant.

To the Corporation Commission of the State of Oklahoma:

Please take notice that the foregoing application for supersedeas will be presented to the Supreme Court of the State of Oklahoma at nine o'clock A. M., on the 17th day of December, 1921, or as soon thereafter as counsel can be heard.

\_\_\_\_\_  
Attorney for Appellant.

Service of the foregoing notice and application and receipt of a copy thereof, is hereby acknowledged this 16th day of December, 1921.

\_\_\_\_\_  
Attorney General of the State of Oklahoma.

Service of the foregoing notice and application and receipt of a copy thereof, is hereby acknowledged this 16th day of December, 1921.

CORPORATION COMMISSION OF  
THE STATE OF OKLAHOMA,

By — —.

116 Before the Corporation Commission of Oklahoma.

Cause No. 4302.

In the Matter of Gas Rates at OKLAHOMA CITY, EL RENO, ENID,  
YUKON and BRITTON.

(Order No. 1889, July 1, 1921.)

*Amended Petition.*

Comes now the Oklahoma Gas and Electric Company, and for its amended petition in said cause, refusing to waive and expressly reserving to itself the right to appeal from Order No. 1886, in Cause No. 4023, and also reserving to itself any and all other legal or

equitable remedies and rights it may have in connection with said Order No. 1886, in cause No. 4023, states:

1st. That it is a public service corporation and engaged in distributing natural gas in the cities and towns of Oklahoma City, El Reno, Enid, Yukon and Britton, and that in all of said towns it is, and was, acting under contracts with the Oklahoma Natural Gas Company, which are on file with this Commission, and which are hereby made a part of this petition the same as if they were set out in full herein.

2nd. That under said contracts, your petitioner herein receives as its compensation one-third ( $\frac{1}{3}$ ) of the proceeds of all gas sold for domestic purposes, and one-fourth ( $\frac{1}{4}$ ) of the proceeds of all gas sold for manufacturing purposes.

3rd. That this Commission, under an order dated June 25th, 1921, undertook to abrogate said contracts and change the relationship existing between the Oklahoma Natural Gas Company and this petitioner, and undertook to give to the Oklahoma Natural Gas Company a greater share of the receipts from the sale of natural gas in the cities and towns referred to in this petition, and also undertook to shift from the Oklahoma Natural Gas Company to the petitioner herein, the burden of paying for unaccounted for gas, and all losses in collection, all of which this petitioner claims is contrary to law and not justified by the facts and testimony as the same appear from the record in said cause No. 4023.

4th. That for many years your petitioner has been acting under said contracts without receiving an adequate return on the investment it was called upon to make under said contracts, and that the change now sought to be brought about in the relationship between the Oklahoma Natural Gas Company and your petitioner, compels this petitioner to ask for temporary relief pending a final valuation of its property and a final determination of the legal right of the Commission to change said relations and the fixing of a permanent rate to the consumers of natural gas in the cities and towns herein mentioned.

5th. Your petitioner further states that it did, in the fall of 1920, submit to this Commission an inventory and appraisal of its property devoted to the public use in distributing natural gas in the cities and towns referred to herein, and that numerous public hearings were had on the same, and that said matter of valuation was finally closed and submitted to this commission for decision on January 28th, 1921, but that up to the present time the Commission has not acted in said matter of valuation, and therefore this petitioner is not in a position to state what valuation should be used in fixing a rate to the Consumer until said valuation has been finally fixed, and consequently a temporary rate to save your petitioner from loss, caused by the unwarranted and illegal action of the Commission in undertaking to change the relationship and the rate

of remuneration between the Oklahoma Natural Gas Company, and this petitioner, becomes necessary.

6th. The valuation as shown in the appraisal and inventory submitted to the Commission heretofore, including the usual overheads, going value, and working capital, but excluding all bond discounts and other costs of money, and discarded property, after deducting depreciation, was as follows:

Oklahoma City .....	\$3,124,775.00
El Reno .....	416,736.00
Enid .....	714,133.00

(The figures for Oklahoma City include Britton, Bethany, Yukon and Putnam City, which are treated as a part of the Oklahoma City System as to operating expenses, construction, maintenance, etc.)

The inventory and appraisal was made on property in existence, and used and useful in the distribution of natural gas in the cities and towns above enumerated, as of March 31st, 1920, and since the latter date, your petitioner has expended on, and added to, the distribution systems above enumerated, the following amounts:

Oklahoma City .....	\$100,068.03
El Reno .....	3,428.70
Enid .....	26,548.37

so that a valuation as of May 31st, 1921, not including, however, any discounts on securities or costs of money, values of franchises, contracts, or other intangibles, except the single item of going value, would be as follows:

Oklahoma City .....	\$3,224,843.00
El Reno .....	420,168.00
Enid .....	740,682.00

The theory of valuation upon which these figures are based has had the approval of the Supreme Court of the United States in all of the recent cases on the subject of valuation.

7th. Your petitioner further shows that the actual cost of material and labor, as shown by your petitioner's books with the usual overheads, such as engineering, interest during construction, etc., and going concern value added, but with no addition for the cost of money or discarded property, value of franchises, gas contracts, or other and proper intangibles for the period ending May 31st, 1921, is as follows:

119 Oklahoma City .....	\$2,365,403.81
El Reno .....	293,301.22
Enid .....	567,177.70

Your petitioner further states that in addition to the figures referred to, there should, in all justness and fairness, be added a proper allowance for discounts on securities and other costs of money, to-

gether with a proper allowance for the value of franchises, gas contracts, and other intangibles, for it is perfectly evident that if it becomes necessary to issue securities in order to raise capital for the purpose of adding to the distribution system and such securities are of necessity sold at less than par value, the difference between the sum realized and the par value of the securities is a proper part of the cost of making such extensions.

This is true whether the same is done by a private business concern, or a public utility company.

The cost of money is as proper an element in the cost of a plant as is the cost of material and labor.

In addition to the foregoing, in the City of Oklahoma City, the Oklahoma Gas and Electric Company was compelled to, and did, pay \$396,000.00 for the acquisition of the contract under which it is now operating, and which was originally granted by the Oklahoma Natural Gas Company to Mr. Eugene Mackey for the distribution of natural gas in the City of Oklahoma City, and acquired from him by intermediate assignment by your petitioner.

8th. For the year ending March 31st, 1921, which is the year during which the so-called 48 cent rate was in effect, there was sold and distributed in the towns enumerated herein, gas for domestic and industrial purposes as follows:

Oklahoma City, Domestic .....	2,523,097 M cu. ft.
Industrial.....	1,751,414 "
El Reno, Domestic .....	182,086 "
Industrial.....	156,953 "
Enid, Domestic .....	499,719 "
Industrial.....	429,078 "

To supply the same amount of gas during the coming year, assuming unaccounted for gas at but twenty per cent, and your  
120 petitioner states that this 20 per cent is lower than the percentage which obtains in the City of Tulsa, or the other towns operated by the Oklahoma Natural Gas Company, in which no agency contracts exist, as testified to by their own witness, Dr. Wyer, would require your petitioner to purchase from the Oklahoma Natural Gas Company the following quantity of gas:

Oklahoma City .....	5,343,140 M cu. ft.
El Reno .....	423,790 "
Enid .....	1,160,999 "

Your petitioner further states that the price it would have to pay to the Oklahoma Natural Gas Company under Order No. 1886, to secure the necessary gas to supply the same quantity disposed of in the towns herein enumerated, would be as follows:

Oklahoma City .....	\$1,226,322.00
El Reno .....	96,142.00
Enid .....	263,682.00

Your petitioner further states that if the present rates of 40 cents for the first 100 thousand feet of gas, 32 cents for the next 400 thousand, and 25 cents for all excess, were permitted to remain in force and effect for the coming year, and assuming that your petitioner would do the same amount of business which it did in the year ending March 31, 1921, its receipts would be as follows:

Oklahoma City .....	\$1,447,092.00
El Reno .....	112,072.00
Enid .....	302,003.80

Your petitioner further states that for the year ending March 31, 1921, during which period of time the so-called 48 cent rate was in effect, its gross receipts in the towns herein referred to, was as follows:

Oklahoma City .....	\$229,719.93
El Reno .....	35,053.86
Enid .....	56,635.85

Your petitioner further states that if the attempted abrogation of the contracts heretofore existing between your petitioner and the Oklahoma Natural Gas Company should be held to be legal and justified, all losses in collections are shifted from the Oklahoma Natural Gas Company to your petitioner, and your petitioner states that such losses in collections may be reasonably fixed at one per cent (1%) of the gross volume of business, so that to the operating expenses last above enumerated, there should be added the following amounts to cover this item of losses in collection:

Oklahoma City .....	\$14,471.00
El Reno .....	1,121.00
Enid .....	3,020.00

Your petitioner further states that if it is compelled to pay to the Oklahoma Natural Gas Company, under Order No. 1886, the sum above indicated, assuming that your petitioner retains all of its present business, both domestic and manufacturing (which is a condition that cannot even be hoped for by the most enthusiastic optimists), its net return in the respective towns above enumerated, to cover depreciation and return on investment would be as follows:

Oklahoma City .....	\$33,421.00)
El Reno .....	20,245.00 } Red.
Enid .....	21,285.00 }

In other words, if the same volume of business, both domestic and manufacturing could be retained for the coming year, your petitioner would receive \$33,421.00 in Oklahoma City, \$20,245.00 in El Reno, and \$21,285.00 in Enid, less than the cost of gas and other operating expenses, without making any provision for depreciation, or return on a fair value of the property.

9th. Your petitioner further states that because of the rapid decline in the price of fuel oil it is impossible to sell any gas whatsoever at the present time for manufacturing purposes, and that a rate of 20 cents at the gate for gas for manufacturing purposes means a cost to the Company of 25 cents at the gate, because of the fact that for every 1,000 feet of gas actually sold for manufacturing purposes it will have to purchase 1,250 feet of gas to take care of

the normal unaccounted for gas in the cities served by it, 122 and that 1,250 feet of gas at 20 cents represents a cost at the gate of 25 cents and your petitioner further states that therefore it cannot afford to sell gas to any manufacturing institution under the conditions prevailing at the present time, and that therefore the condition now confronting the company resolves itself into one of supplying gas for domestic purposes only.

Your petitioner further states that the sale of gas for manufacturing purposes in all of the towns herein enumerated, has in the past few months absolutely been reduced to a negligible quantity, and further states that there is no prospect for a change of conditions which will enable your petitioner to again dispose of natural gas for manufacturing purposes.

Your petitioner further states that the item of unaccounted for gas is a constant factor and not properly gauged by percentages. In other words, your petitioner states that this item will be as great in volume when gas is supplied to domestic consumers only as it would be if both domestic and manufacturing consumers were being supplied.

Your petitioner further states that the unaccounted for gas in the towns hereinabove referred to, with the exception of the City of Enid, for the year ending March 31st, 1921, was as follows:

Oklahoma City.....	586,626 M cu. ft.
El Reno.....	59,663 "

Your petitioner further states that accurate and correct figures for Enid are not available, as for a long portion of the time the meter at Enid was not in working order and gas was being distributed direct to consumers without passing through the meter, as was testified to by Mr. Clark, the meter man of the Oklahoma Natural Gas Company in hearings before your Commission.

Your petitioner further states that the facts above set forth, which have been heretofore established before your Commission, and 123 which stand uncontradicted, show that it will be necessary for your petitioner in order to supply the domestic consumers of the towns herein enumerated with the exception of the City of Enid, to purchase from the Oklahoma Natural Gas Company, providing the same volume of domestic business can be done for the coming year as was done for the year ending March 31st, 1921, the following quantities of gas:

Oklahoma City.....	3,109,723 M cu. ft.
El Reno.....	241,749 "

and that said gas would cost your petitioner under the terms of Order No. 1886, the following amounts:

Oklahoma City.....	\$777,431.00
El Reno.....	60,438.00

Your petitioner further states that under the rates now prevailing for domestic gas, namely, 40 cents, the receipts from the consumers to your petitioner, on the basis just referred to, would be as follows:

Oklahoma City.....	\$1,009,239.00
El Reno.....	72,834.40

Your petitioner further states that the operating expenses, other than the cost of gas, will remain fixed at the figure as they were for the past year, for the reason that the same number of employees, the same amount of maintenance, the same amount of taxes, with possibly an increase in the latter item, will have to be paid irrespective of whether any manufacturing business is done or not. And, your petitioner further states, that in view of the fact that no manufacturing business can be retained under the price fixed by Order No. 1886, and the prevailing price of fuel oil, your petitioner would have available to meet depreciation and return on investment, the following amounts:

Oklahoma City.....	\$18,006.00	} Red.
El Reno.....	23,386.00	

Your petitioner states, therefore, that after paying for the cost of gas, and other operating expenses, under Order No. 1886, if the present rates to consumers are permitted to remain, it will receive from consumers \$18,006.00 less than its actual operating costs in Oklahoma City, leaving no margin whatever for depreciation and return on the investment, and in the City of El Reno, your petitioner will receive \$23,386.00 less than its actual outlay to cover cost of gas and operating expenses.

Your petitioner states that in the City of Enid, assuming the loss of all manufacturing business, which, as your petitioner has pointed out, is inevitable, and has practically taken place, not only in Enid, but in all the other towns and cities referred to in this petition, and applying a percentage of but twenty per cent to cover the item of unaccounted for gas, it would find itself in the position set forth below under the rates to consumers existing there and the rates fixed by Order No. 1886.

Gross Income.....		\$191,395.96
Cost of Gas.....	\$156,162.00	
Operating Expense.....	56,635.85	
Losses in Collection.....	1,913.95	
		214,711.80
		23,315.84 Red.

Your petitioner states, as shown above, that the total expenses of operation amount to \$214,711.80, with a possible revenue of but \$191,395.96, leaving a deficit of \$23,315.84. In other words, the company will receive \$23,315.84 less than its actual operating expenses without any allowance for depreciation or return on investment.

Your petitioner further states that pending a final valuation of the property, in order that it may maintain its credit and maintain the same net earnings which it earned for the year ending March 31st, 1921, and which said net earnings your petitioner states were not sufficient to give it a proper and reasonable return on the value of its property used and useful in distributing natural gas in the cities and towns referred to in this petition, it will have to have a temporary rate for domestic consumption the following net

125 rates:

Oklahoma City.....	60	cents	per	M	cu.	ft.
El Reno.....	88	"	"	"	"	"
Enid .....	65	"	"	"	"	"

Your petitioner further shows that in the past, because of the contracts which were, and as petitioner claims, still are in existence unless the Order No. 1886 is a legal and binding order, its chief revenue came from the sale of natural gas to manufacturing concerns, and that under the rate proposed in Order No. 1886, it will be impossible to maintain any of the manufacturing business, and that all of the revenue theretofore enjoyed by your petitioner from that class of business is to it now and forever lost.

Wherefore, all of the facts being considered, and it appearing that under said Order No. 1886, and the conditions now applying to the business of distributing natural gas in the cities and towns in this petition mentioned, your petitioner will be operating at an actual loss of \$18,006.00 in Oklahoma City, \$23,386.00 in El Reno, and \$23,315.00 in Enid, and this without any provision having been made for depreciation or return on the fair value of the property used and useful in distributing natural gas in the cities and towns referred to in his petition, your petitioner always reserving to itself the right to appeal from Order No. 1886 in Cause No. 4023, and also reserving to itself any and all other legal or equitable remedies and rights it may have in connection with said Order No. 1886, in Cause No. 4023, prays that a temporary order be made fixing rates to consumers in the above enumerated cities and towns so that the loss to which your petitioner is subjected because of the change in condition brought about by Order No. 1886, aforesaid, and the conditions and facts herein referred to, may be minimized, until such time as a final valuation of its property may be made by this Commission and a final and permanent rate established.

OKLAHOMA GAS AND ELECTRIC  
COMPANY,

By PAUL REISS,

Attorney.

126 In the Supreme Court of the State of Oklahoma.

No. —.

MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Appellant,  
vs.

THE STATE OF OKLAHOMA AND THE CORPORATION COMMISSION OF  
THE STATE OF OKLAHOMA, Appellees.

*Application for Supersedeas.*

Comes now the Muskogee Gas and Electric Company, a corporation organized under the laws of the State of Oklahoma, appellant herein, and respectfully shows to the Court that on the 29th day of June, 1921, it filed an application with the Corporation Commission praying for an increase in its gas rates wherein it set forth that the then existing schedule of gas rates theretofore prescribed by the Corporation Commission, and charged by your appellant, was wholly inadequate and did not afford it a fair and adequate return upon the value of its property used and useful in discharging its duties in furnishing gas to the public; a copy of which said application is hereto attached marked "Exhibit A" and made a part hereof. Appellant prayed that the Corporation Commission make an order allowing it to charge a rate to domestic consumers as follows:

In the City of Muskogee, 80 cents per M cubic feet, net.

On July 1st, 1921, the Commission entered its order, being Order No. 1890, denying appellant's application, but allowed it a temporary increase of 5 cents per thousand cubic feet.

Appellant respectfully shows to this Court that it has appealed from said Order No. 1890 of the Corporation Commission, to this  
127 Court, and said appeal has been allowed, and that it also has applied to the said Corporation Commission to supersede said Order, which application the Corporation Commission has denied.

Appellant further shows to the court that the property used and useful in delivering natural gas to its consumers in the City of Muskogee, is not less than \$1,411,274.00.

Appellant further shows to this Court that the Corporation Commission of the State of Oklahoma has never fixed a valuation of its property used and useful in its said business of furnishing gas to the public, though your appellant has had on file a petition praying for said valuation for more than one year, and on which application the Commission held repeated hearings, and finally closed the matter of hearings on the same, on January 8th, 1921, but since which time the Commission has not made any finding whatsoever as to said valuation.

Your appellant further shows to the Court that said Order No. 1890, was made by the Corporation Commission without a hearing, and without any investigation as to the merits of appellant's application for increased rates, and that it has never granted appellant a hearing on the said application filed on the 29th day of June, 1921.

Appellant alleges that the rates it is allowed to charge under said Order No. 1890 of the said Corporation Commission are wholly unremunerative and do not give it a fair return on the value of its property used and useful in its said business, and that the said Order fixing the said rates is therefore confiscatory, and takes appellant's property without due process of law, contrary to the Constitution of this State, and the Constitution of the United States.

Your appellant further shows that it purchases the gas which it distributes in the City of Muskogee, from the Oklahoma  
128 Natural Gas Company, under Order No. 1886 of the Corporation Commission, known as the Gate-rate Order, by which order appellant is required to pay said Oklahoma Natural Gas Company the sum of 25 cents per thousand cubic feet for the first five hundred thousand cubic feet of gas sold to each consumer, and so purchased by it from the Oklahoma Natural Gas Company, and 20 cents per thousand cubic feet for all gas purchased by it from said Oklahoma Natural Gas Company and sold to each consumer in excess of said first five hundred thousand cubic feet.

Your appellant further shows that the cost of gas under said Gate-rate order, since July 1st, 1921, to September 30th, 1921, is as follows, for said City of Muskogee.

July.	August.	September.
\$18,144.50	\$17,730.50	\$17,000.75

and that the cost of gas, as above stated, is largely in excess of the cost of gas under the contracts existing between the Muskogee Gas and Electric Company and the Oklahoma Natural Gas Company prior to the issuance of said Order No. 1886 by the Corporation Commission cancelling said contracts and substituting therefor the said gate rate.

Your appellant alleges that had the so-called gate rate under the Corporation Commission's Order No. 1886 been in force and effect for the twelve months beginning October 1st, 1920, and ending September 30th, 1921, and had the present rates to consumers in the City of Muskogee been in effect for the same period of time, your appellant would have had \$9,261.00 less than nothing, available for depreciation, amortization and return on the property used and useful in distributing natural gas in the said City of Muskogee.

Your appellant alleges that if the same volume of business could be retained for the next twelve months as was done during the  
twelve months period ending September 30th, 1921, under  
129 Order No. 1886 of the Corporation Commission and the rates now in force and effect it would have nothing available for depreciation, amortization and return on the property used and useful in distributing natural gas in said City of Muskogee, but in lieu thereof would have a deficit of \$9,261.00 as a result of said twelve month period of operations.

In other words, appellant alleges that for the year's operation the operating expenses and cost of gas would exceed the gross receipts

from the sale of gas in the City of Muskogee in the sum of \$9,-261.00.

Your appellant further shows to the Court that the Oklahoma Natural Gas Company did, on the 16th day of December, 1921, obtain from the United States District Court for the Western District of Oklahoma, a temporary restraining order, enjoining the said Order No. 1886 of the Corporation Commission, and has, or will immediately, place in effect a gate rate of not less than 35 cents per thousand cubic feet of gas, which will greatly diminish its revenues and render the rates that it is now permitted to charge under the order of the Corporation Commission, still more inadequate and unremunerative and completely confiscatory, and your appellant alleges that it will therefore be necessary for this court to immediately put into effect the following schedule of rates to consumers in order to give appellant *on* adequate and fair return upon the value of its property used and useful in its business of furnishing gas in said City of Muskogee, to-wit:

The first 500 M cubic feet per month, 80¢ per M cubic feet, net;  
Excess of 500 M cubic feet per month, 25¢ per M cubic feet,  
net.

130 Your appellant further shows to this Court that this cause cannot be prepared, submitted to and decided by this court for several months, and pending a decision by this court your appellant is being subjected to a confiscation of its property in violation of the Constitution of this State, and the Constitution of the United States, and unless it is granted a supersedeas herein and permitted to charge the rates prayed for herein, it will suffer great and irreparable damage.

Wherefore, pending this appeal, appellant prays this court to supersede said order of the Corporation Commission and to allow it to charge the schedule of rates applied for herein, and hereby offers to comply with such terms as may be imposed by this court, including the giving of a bond in such sum as may be fixed by this court, conditioned that it will refund to its customers the difference between the rates charged and collected by it and the rates which may be fixed by this court on appeal, and your appellant offers to keep its books so as to give the necessary information on which to make any such refund, if it becomes necessary, and to comply with any and all other conditions prescribed by law or by this court.

MUSKOGEE GAS AND ELECTRIC  
COMPANY,

By ————,  
Attorney.

131 STATE OF OKLAHOMA,  
County of Oklahoma, ss:

W. R. Emerson, being duly sworn, says that the facts stated in the foregoing application are true; that he is Treasurer of the Muskogee Gas and Electric Company, and is making this affidavit from his

own personal knowledge and for and on behalf of the Muskogee Gas and Electric Company.

Subscribed and sworn to before me this — day of December, 1921.

\_\_\_\_\_  
Notary Public.

My Commission expires — —, — —.

132 To the Attorney General of the State of Oklahoma:

Please take notice that the foregoing application for supersedeas will be presented to the Supreme Court of the State of Oklahoma at nine o'clock A. M. on the 17th day of December, 1921, or as soon thereafter as counsel can be heard.

\_\_\_\_\_  
Attorney for Appellant.

To the Corporation Commission of the State of Oklahoma:

Please take notice that the foregoing application for supersedeas will be presented to the Supreme Court of the State of Oklahoma at nine o'clock A. M. on the 17th day of December, 1921, or as soon thereafter as counsel can be heard.

\_\_\_\_\_  
Attorney for Appellant.

Service of the foregoing notice and application, and receipt of a copy thereof is hereby acknowledged this 16th day of December, 1921.

\_\_\_\_\_  
Attorney General of the State of Oklahoma.

Service of the foregoing notice and application and receipt of a copy thereof, is hereby acknowledged, this 16th day of December, 1921.

CORPORATION COMMISSION OF THE  
STATE OF OKLAHOMA,

By — —.

133 Before the Corporation Commission of Oklahoma.

Cause No. 4301.

In the Matter of Gas Rates at MUSKOGEE, OKLAHOMA.

(Order #1890, June 29, 1921.)

*Amended Petition.*

Comes now the Muskogee Gas and Electric Company, and for its amended petition in said cause, refusing to waive and expressly

reserving to itself the right to appeal from Order No. 1886, in Cause No. 4023, and also reserving to itself any and all other legal or equitable remedies and rights it may have in connection with said Order No. 1886, in Cause No. 4023, states:

1st. That it is a public service corporation, and engaged in distributing natural gas in the City of Muskogee, and that in said city it is, and was acting under certain contracts with the Oklahoma Natural Gas Company which are on file with this Commission, and which are hereby made a part of this petition, the same as if they were set out in full herein.

2nd. That under said contracts, your petitioner herein receives as its compensation one third ( $\frac{1}{3}$ ) of the proceeds of all gas sold for more than fifteen cents per thousand cubic feet.

3rd. That this Commission, under an order dated June 25th, 1921, undertook to abrogate said contracts and change the relationship existing between the Oklahoma Natural Gas Company and this petitioner, and undertook to give to the Oklahoma Natural Gas Company a greater share of the receipts from the sale of natural gas in said City of Muskogee, and also undertook to shift from the Oklahoma Natural Gas Company to the petitioner herein, the burden of paying for unaccounted for gas, and all losses in collection, all of which this petitioner claims is contrary to law and not justified by the facts and testimony as the same appear from the record in said Cause No. 4023.

4th. That for many years your petitioner has been acting under said contracts without receiving an adequate return on the investment it was called upon to make under said contracts, and 134 that the change now sought to be brought about in the relationship between the Oklahoma Natural Gas Company and your petitioner, compels this petitioner to ask for temporary relief pending a final valuation of its property and a final determination of the legal right of the Commission to change said relations and the fixing of a permanent rate to the consumers of natural gas in the City of Muskogee.

5th. Your petitioner further states that it did, in the fall of 1920, submit to this Commission an inventory and appraisal of its property devoted to the public use in distributing natural gas in the City of Muskogee and that numerous public hearings were had on the same, and that said matter of valuation was finally closed and submitted to this Commission for decision on January 28th, 1921, but that up to the present time the Commission has not acted in said matter of valuation, and therefore this petitioner is not in a position to state what valuation should be used in fixing a rate to the consumer until said valuation has been finally fixed, and consequently a temporary rate to save your petitioner from loss, caused by the unwarranted and illegal action of the Commission in undertaking to change the relationship and the rate of remuneration between the

Oklahoma Natural Gas Company, and this petitioner, becomes necessary.

6th. The valuation as shown in the appraisal and inventory submitted to the Commission heretofore, including the usual overheads, going value, and working capital, but excluding all bond discounts and other costs of money, and discarded property, after deducting depreciation, was as follows:

City of Muskogee..... \$1,403,688.00

The inventory and appraisal was made on property in existence, and used and useful in the distribution of natural gas in the City of Muskogee, as of March 31st, 1920, and since the latter date, your petitioner has expended on, and added to the distribution of said city, the following amount:

City of Muskogee..... \$33,977.62

so that a valuation as of May 31, 1921, not including, however, any discounts on securities or costs of money, values of franchises, contracts, or other intangibles, except the single item of going value, would be as follows:

City of Muskogee..... \$1,437,666.00

The theory of valuation upon which these figures are based has had the approval of the Supreme Court of the United States in all of the recent cases on the subject of valuation.

7th. Your petitioner further shows that the actual cost of material and labor, as shown by your petitioners' books, with the usual overheads such as engineering, interest during construction, etc., and going concern value added, but with no addition for the cost of money or discarded property, value of franchise, gas contracts, or other and proper intangibles, for the period ending May 31st, 1921, is as follows:

City of Muskogee..... \$1,135,846.00

Your petitioner further states that in addition to the figures last referred to, there should, in all justness and fairness, be added a proper allowance for discounts on securities and other costs of money, together with a proper allowance for the value of franchises, gas contracts, and other intangibles, for it is perfectly evident that if it becomes necessary to issue securities in order to raise capital for the purpose of adding to the distribution system and such securities are of necessity sold at less than par value, the difference between the sum realized and the par value of the securities is a proper part of the cost of making such extensions.

This is true whether the same is done by a private business concern or a public utility company.

The cost of money is as proper an element in the cost of a plant as is the cost of material and labor.

In addition to the foregoing, in the City of Muskogee, the Muskogee Gas and Electric Company was compelled to, and did pay \$100,000.00 for the acquisition of the contract and a partially constructed distributing system under which it is now operating, and which was originally granted by the Caney River Gas Company to local Muskogee parties for the distribution of natural gas in the City of Muskogee, and acquired from them by immediate assignment by your petitioner.

8th. For the year ending March 31st, 1921, which is the year during which the so-called 48 cent rate was in effect there was sold and distributed in the City of Muskogee, gas for domestic and industrial purposes as follows:

City of Muskogee, Domestic.....	2,523,097 M cu. ft.
Industrial.....	1,751,414 " "

To supply the same amount of gas during the coming year, assuming unaccounted for gas at but twenty per cent, and your petitioner states that this 20 per cent is lower than the percentage which obtains in the City of Tulsa, or the other towns operated by the Oklahoma Natural Gas Company, in which no agency contracts exist, as testified to by their own witness, Dr. Wyer, would require your petitioner to purchase from the Oklahoma Natural Gas Company the following quantity of gas:

City of Muskogee.....	1,812,110 M cu. ft.
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Your petitioner further states that the price it would have to pay to the Oklahoma Natural Gas Company under Order No. 1886, to secure the necessary gas to supply the same quantity disposed of in the City of Muskogee, would be as follows:

City of Muskogee.....	\$416,617.00
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Your petitioner further states that if the present rates of 40 cents for the first 100 thousand feet of gas, 32 cents for the next 400 thousand, and 25 cents for all excess, were permitted to remain in force and effect for the coming year, and assuming that your petitioner could do the same amount of business which it did in the year ending March 31st, 1921, its receipts would be as follows:

City of Muskogee.....	\$463,366.00
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Your petitioner further states that for the year ending March 31st, 1921, during which period of time the so-called 48 cent rate was in effect, its gross receipts in said city of Muskogee were as follows:

City of Muskogee.....	\$586,631.33
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Your petitioner further states, as is shown above, that the loss in revenue to your petitioner because of reduction in rates from 48 cents to 40 cents amounts to \$123,265.33.

Your petitioner further states that the operating costs, other than the cost of gas, in said City of Muskogee, for the year ending March 31st, 1921, were as follows:

City of Muskogee..... \$113,243.5

Your petitioner further states that if the attempted atrogation of the contracts heretofore existing between your petitioner and the Oklahoma Natural Gas Company should be held to be legal and justified, all losses in collection are shifted from the Oklahoma Natural Gas Company to your petitioner, and your petitioner states that such losses in collections may be reasonably fixed at one per cent (1%) of the gross volume of business, so that to the operating expenses last above enumerated, there should be added the following amount to cover this item of losses in collection:

City of Muskogee..... \$4,634.00

Your petitioner further states that if it is compelled to pay to the Oklahoma Natural Gas Company, under Order No. 1886, the sum above indicated, assuming that your petitioner retains all of its present business, both domestic and manufacturing, (which is a condition that cannot even be hoped for by the most enthusiastic optimist) its net return in the City of Muskogee, to cover depreciation and return on investment, would be as follows:

City of Muskogee..... \$71,128.53

In other words, if the volume of business, both domestic and manufacturing could be retained for the coming year, your petitioner would receive \$71,128.53 in Muskogee, less than the cost of gas and other operating expenses, without making any provision for depreciation or return on a fair value of the property.

9th. Your petitioner further states that because of the rapid decline in the price of fuel oil it is impossible to sell any gas whatsoever at the present time for manufacturing purposes, and that a rate of 20 cents at the gate for gas for manufacturing purposes means a  
 138 cost to the company of 25 cents at the gate, because of the fact that for every 1,000 feet of gas actually sold for manufacturing purposes it will have to purchase 1,250 feet of gas to take care of the normal unaccounted for gas in the cities served by it, and that 1,250 feet of gas at 20 cents represents a cost at the gate of 25 cents, and your petitioner further states that therefore it cannot afford to sell gas to any manufacturing institution under the conditions prevailing at the present time, and that therefore the condition now confronting the company resolves itself into one of supplying gas for domestic purposes only.

Your petitioner further states that the sale of gas for manufacturing purposes in the City of Muskogee has in the past few months been reduced to a negligible quantity, and further states that there is no prospect for a change of conditions which will enable your petitioner to again dispose of natural gas for manufacturing purposes.

Your petitioner further states that the item of unaccounted for gas is a constant factor and not properly gauged by percentages. In other words, your petitioner states that this item will be as great in volume when gas is supplied to domestic consumers only as it

would be if both domestic and manufacturing consumers were being supplied.

Your petitioner further states that the unaccounted for gas in the City of Muskogee for the year ending March 31st, 1921, was as follows:

City of Muskogee ..... 517,234 M cu. ft.

Your petitioner further states that the unaccounted for gas referred to above is greater than the amount found to prevail in the Oklahoma City or Tulsa plants, but your petitioner states that a great percentage of the leakage was found to be on the lines of the Oklahoma Natural Gas Company within the limits of Muskogee, and on the lines of the City of Muskogee, within the city limits of Muskogee, which said lines were connected with the distribution system of this petitioner, but were not under the control or owned by this petitioner.

Your petitioner further states that this fact was fully developed at a hearing before your commission in the early part of this year and that when due allowance is made for the leakage on the lines owned by the City of Muskogee, it will be found that the leakage on the lines owned and controlled by your petitioner in the City of Muskogee is not greatly out of proportion to the general average of leakage in well maintained natural gas distribution systems.

Your petitioner further states that the leakage problem in Muskogee is magnified because of the fact that the street railway company has not its rails properly bonded, and therefore, there is a great deal of electrolytic action in the City of Muskogee.

Your petitioner further states that this condition of affairs has been called to the attention of your commission by petitioner on several occasions in the past, and further states that if the burden of accounting for the unaccounted for gas in the City of Muskogee is to be shifted from the Oklahoma Natural Gas Company to your petitioner, proper steps should be taken by your Commission to compel the City of Muskogee, the Muskogee Traction Company, and the Oklahoma Natural Gas Company to remedy the conditions hereinbefore referred to.

Your petitioner further states that the facts above set forth, which have been heretofore established before your Commission, and which stand uncontradicted, show that it will be necessary for your petitioner in order to supply the domestic consumers of the City of Muskogee, to purchase from the Oklahoma Natural Gas Company, providing the same volume of domestic business can be done for the coming year as was done for the year ending March 31st, 1921, the following quantity of gas:

City of Muskogee ..... 1,384,373 M cu. ft.

and that said gas would cost your petitioner under the terms of Order No. 1886, the following amount:

City of Muskogee ..... \$346,093.00

140 Your petitioner further states that under the rates now prevailing for domestic gas, namely, 40 cents, the receipts from the consumers to your petitioner, on the basis just referred to, would be as follows:

City of Muskogee ..... \$346,856.00

Your petitioner further states that the operating expenses, other than the cost of gas, will remain fixed at the figure as they were for the past year, for the reason that the same number of employees, the same amount of maintenance, the same amount of taxes, with possibly an increase in the latter item, will have to be paid irrespective of whether any manufacturing business is done or not. And, your petitioner further states, that in view of the fact that no manufacturing business can be retained under the price fixed by Order No. 1886, and the prevailing price of fuel oil, your petitioner would have available to meet depreciation and return on investment, the following amount:

City of Muskogee ..... \$115,950.00

Your petitioner states, therefore, that after paying for the cost of gas, and other operating expenses, under Order No. 1886, if the present rate to consumers is permitted to remain, it will receive from consumers \$115,950.00 less than its actual operating costs in the City of Muskogee, leaving no margin whatever for depreciation and return to the investment.

Your petitioner further states that pending a final valuation of its property, in order that it may maintain its credit and maintain the same net earnings which it earned for the year ending March 31st, 1921, and which said net earnings your petitioner states were not sufficient to give it a proper and reasonable return on the value of its property used and useful in distributing natural gas in the City of Muskogee, it will have to have as a temporary rate for domestic consumption the following net rates;

City of Muskogee ..... 80 cents per M cu. ft. net.

141 Your petitioner further shows that in the past, because of the contracts which were, and as petitioner claims, still are in existence, unless the Order No. 1886 is a legal and binding order, its chief revenue came from the sale of natural gas to manufacturing concerns, and that under the rate proposed in Order No. 1886, it will be impossible to maintain any of the manufacturing business, and that all of the revenue heretofore enjoyed by your petitioner from that class of business is to it now and forever lost.

Wherefore, all of the facts being considered, and it appearing that under said Order No. 1886, and the conditions now applying to the business of distributing natural gas in the City of Muskogee, your petitioner will be operating at an actual loss of \$115,950.00 and this without any provision having been made for depreciation or return on the fair value of the property used and useful in distributing natural gas in the City of Muskogee, your petitioner always reserv-

ing to itself the right to appeal from Order No. 1886 in Cause No. 4023, and also reserving to itself any and all other legal or equitable remedies and rights it may have in connection with said Order No. 1886, in Cause No. 4023, prays that a temporary order be made fixing rates to consumers in the City of Muskogee so that the loss to which your petitioner is subjected because of the change in conditions brought about by Order No. 1886, aforesaid, and the conditions and facts herein referred to, may be minimized until such time as a final valuation of its property may be made by this Commission and a final and permanent rate established.

MUSKOGEE GAS AND ELECTRIC CO.,  
By ———, *Attorney.*

142 In the Supreme Court of the State of Oklahoma.

No. 12918.

OKLAHOMA CITY AND ELECTRIC COMPANY, a Corporation, Plaintiff  
in Error,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and  
THE STATE OF OKLAHOMA, Defendants in Error.

*Order.*

This cause coming on for hearing upon the application for supersedeas filed by the appellant, the Court after the premises, finds: That conditions have so materially changed since the order appealed from was rendered by the Corporation Commission, that the interest of justice requires that said cause be remanded to the Commission to be further investigated by the Commission and reported upon to the Court; that this order contemplates that the powers and jurisdiction of the Commission in the investigation hereby ordered shall be as full and complete as if no appeal from said order had been taken. That this investigation shall be had before the Commission within fifteen days from date hereof, and the report of the Commission, together with its findings and conclusions, transmitted to this court. In the meantime further action on the application for supersedeas is continued.

Done in Chambers this the 17th day of December, 1921.

(Signed)

JNO. B. HARRISON,  
*Chief Justice.*

143 In the Supreme Court of the State of Oklahoma.

No. 12919.

MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Plaintiff  
in Error,

VS.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and  
THE STATE OF OKLAHOMA, Defendants in Error.

*Order.*

This cause coming on for hearing upon the application for supersedeas filed by the appellant, the court, after hearing the argument of counsel and being fully advised in the premises, finds: That conditions have so materially changed since the order appealed from was rendered by the Corporation Commission, that the interest of justice requires that said cause be remanded to the Commission to be further investigated by the Commission and reported upon to the court; that this order contemplates that the powers and jurisdiction of the Commission in the investigation hereby ordered shall be as full and complete as if no appeal from said order had been taken. That this investigation shall be had before the Commission within fifteen days from date hereof, and the report of the Commission, together with its findings and conclusions, transmitted to this court. In the meantime further action on the application for supersedeas is continued.

Done in Chambers this the 17th day of December, 1921.

(Signed)

JNO. B. HARRISON,  
*Chief Justice.*

144 Before the Corporation Commission of the State of Oklahoma.

Cause No. 4302. Order No. 1995.

In the Matter of Gas Rates at OKLAHOMA CITY, EL RENO, ENID,  
YUKON, and BRITTON, OKLAHOMA.

*Findings of Fact, Opinion, and Order.*

This case was filed June 22, 1921. The petitioner, the Oklahoma Gas & Electric Company, is, and was at that time, engaged in the business of receiving natural gas from the Oklahoma Natural Gas Company at the town border of Oklahoma City and the other towns mentioned in the title of the case, and selling the same to the public in the various towns for domestic and industrial uses.

The gas was distributed to consumers at rates prescribed by this Commission. Settlement was made between the supplying and distributing gas companies on shares in the proceeds of collections for gas sold, the share of each being governed by contract.

When this case was filed the Oklahoma Gas & Electric Company anticipated that the contract referred to was about to be set aside by this Commission and that a settlement by the distributing company for all gas received at the city border would be required.

The petitioner requested in its petition in this case that at the time of change from the proportional contract relation between the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company to a gate rate basis, to govern payment for gas received, a proper rate for gas sold to consumers be fixed by the Corporation Commission.

This cause has never been formally consolidated with any other proceeding but is so closely involved with two other cases as to suggest that a statement of the issue in this case refer to said other proceedings.

The gate rate referred to in the petition herein was established by Corporation Commission Order No. 1886, dated June 28, 1921, in Cause 4023. This was a proceeding filed August 10, 1920, wherein the Oklahoma Natural Gas Company petitioned the Commission to find a valuation of its property and establish a gate rate or city border rate for gas furnished by said company for distribution to consumers in the several cities supplied directly or indirectly by said company.

The Oklahoma Gas & Electric Company, petitioner in this case, and the Muskogee Gas & Electric Company, petitioner in Cause 4301, which is identical with the present case except that it involves rates at Muskogee, Oklahoma, filed demurrers to the hearing of the application of the Oklahoma Natural Gas Company in Cause 4023, asking for a city border rate, but the same were over-ruled.

Prior to the filing of petition in the present case, to-wit: on November 26, 1920, the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company filed a petition in Cause 4142 requesting the Commission to find a valuation of properties of said companies. Hearings under said application were held at  
145 various dates in 1920 and 1921, and exhibits and testimony were introduced offering the Commission a basis for arriving at such a valuation. At the present time no order has been entered in said Cause 4142.

On July 1, 1921, the Commission issued its Order 1889 in the present case, establishing certain rates to be charged consumers in the cities involved in this case, said order being designated as a temporary order and being issued in response to the request of the petitioner herein for a rate to consumers applicable as of the date when the change from the old contract to the city border rate basis should become effective as between the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company. Said gate rate order and Order 1889 became effective July 1, 1921.

Said Order 1889 was appealed by the Oklahoma Gas & Electric Company to the Supreme Court of Oklahoma, where it was contended that this Commission had no authority to make a temporary order of the character imputed by the Commission to Order 1889 without first finding a valuation of the property which had been and was being sought in Cause 4142. This contention was not sustained by the Supreme Court and Order 1889 was affirmed. Later, to-wit, on December 17, 1921, the petitioner in this case applied to the Supreme Court of Oklahoma for a writ of supersedeas by which it sought to suspend the operation of Order 1889 and secure from said court authority to collect very much higher rates than were prescribed in said order. The Supreme Court forthwith on the same date remanded said Order 1889 to the Corporation Commission with instructions to make further investigation and further report to said Court on the issues therein involved, such further report to be filed with the Supreme Court by the Corporation Commission within fifteen days, or on or before January 3, 1922. The petitioner herein thereafter, and before said January 3, 1922, filed proceedings in equity in the District Court of the United States in the Western District of Oklahoma, by which proceedings it sought to enjoin the Corporation Commission and the State of Oklahoma from enforcing the provisions of Order 1889.

The Corporation Commission took further evidence in this Cause on December 30th and 31st, 1921, but on account of the impossibility of having such evidence transcribed before January 3, 1922, and on account of being compelled to make preparation to answer the proceedings in equity in the United States court already referred to, this Commission was unable to make further report to the Supreme Court in this case on or before January 3, 1922, and, upon showing, was given additional time of fifteen days, or until January 18, 1922.

#### Valuation Theories.

While the petition in this case was filed June 22, 1921, the investigation by the Commission into the valuation of the property involved in this case as a basis for a return has covered a period of practically fifteen months.

As already stated, in November, 1920, the company applied to the Commission for approval of a valuation of its property of all classes in all the cities involved in this proceeding. Its engineer stated that his preparation of the exhibits offered had taken one year and had involved the use of the time of about ten men. Valuations were submitted covering all gas and electric properties in the entire state owned by the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company. (Record, Cause 4142, Dec. 9, 1920, p. 25.) It was urged at that time that the Commission give its approval, with the least possible delay, to the valuation submitted, it being represented that the same was to be used  
146 for the purpose of re-financing outstanding obligations of the company rather than as a basis for establishing rates.

However, the original application stated specifically that revision of certain rates was desired, and the Commission has never considered the rate issue other than as involved in that case. In fact the Commission has never assumed that it would have authority to give its approval or make a finding as to the valuation of a public utility except as a basis for rate adjustment.

The Commission employed an engineer and provided him with help for the purpose of making a verification of the quantities represented by the company's valuation as existing in its gas property in Oklahoma City, and an appraisal of the present value thereof. This work was begun June 1, 1921, and the engineer's report to the Commission was made November 1, 1921. This report represented the work of from five to ten men during this five months' period. (Record, Cause 4302, Dec. 30, 1921, p. 21.)

The company's engineer reported quantities as of April 1, 1920 (Record, Cause 4142, Dec. 9, 1920, p. 10). His figures are submitted in Uhlendorf Company's Exhibit No. 3 in Cause 4142, pages 3 and 4. The letter of transmittal, beginning at page 3 of said exhibit, states that valuations are submitted on the basis of reproduction cost now and present value, and, in addition, reproduction cost and reproduction cost less depreciation, based on five years average prices for the period ended March 31, 1920. The figures representing such valuations for the Oklahoma City division of the company's gas property are as follows: Reproduction cost now \$3,152,905; present value, \$2,296,901; reproduction cost on five year average prices, \$2,539,793; reproduction cost less depreciation, based on five year average prices, \$1,853,286.00. These figures are exclusive of working capital, and going concern value.

The Commission's engineer reported that quantities shown in the inventory submitted by the company were found by him to be substantially correct. (Record, Cause 4302, p. 23.) The Commission's engineer submitted an exhibit on the replacement new theory (Mussion's Exhibit No. 2, Cause 4302) and on the original cost theory, (Mussion's Exhibit No. 1). In making the appraisal on the replacement theory, quantities shown by the company's exhibits as of April 30, 1920, were used. To this were added additions and betterments to the property down to July 31, 1921, evidences thereof being taken from the company's office work register. (Record, Cause 4302, p. 22.) Prices used were as of August 1, 1921, same being secured from supply houses or manufacturers, as to materials, and the labor costs being included, according to the engineer's testimony, at wages prevailing in Oklahoma City as of that date. (Record, Cause 4302, p. 25.)

The Commission's engineer developed an original cost appraisal by examining vouchers and bills. The replacement cost found by this engineer, based on August first, 1921, prices, was \$2,693,492. He estimated that the plant had been in use an average of eight years and found its present value on this theory to be \$2,092,876. His valuation of the property on the original cost theory was given as \$1,846,845, as of August 1, 1921.

During the period when the company's valuation figures were prepared the highest prices known in the history of the utility industry, as well as in all other industries, prevailed. Utilities urged upon courts and commissions generally, and upon this Commission, the adoption of the reproduction cost new theory as a basis for rate structures. The Minnesota rate case decided by the U. S. Supreme

Court in 1913 was pointed to as endorsing that theory. In 147 that case, however, the court said that each case must rest upon its special facts, that the ascertainment of fair value is not controlled by artificial rules, that it is not a matter of formula but that there must be a reasonable judgment having its basis in a proper consideration of all relevant facts. In the case of *Des Moines Gas Company vs. City of Des Moines*, 238 U. S. 153, the Supreme Court held that each case must be controlled by its own circumstances, and that while in the Minnesota case reproduction cost was declared to be an appropriate method, there was no indication that it was the exclusive method of ascertaining values for rate making. This Commission known of no case in which the Supreme Court has considered specifically a valuation based upon reproduction cost during an abnormal period such as that upon which the company's reproduction valuation in this case is based, and the court clearly has not foreclosed itself by the Minnesota case, or any other, from taking into consideration any condition or circumstance which would have the effect of making the reproduction or any other theory unreasonable or unjust.

In the case of *Brooklyn-Borough Gas Company vs. Public Service Commission*, (P. U. R. 1918-F, 335-337) former Justice Charles E. Hughes, who wrote the opinion in the Minnesota rate case, sat as referee. In the Brooklyn case he was confronted squarely with the question as to the constitutional right of a public utility to have its reproduction cost in abnormal times adopted as a rate base, and in his opinion he said:

"When the value of a plant has been properly determined by the regulating authority, and suitable allowance is made for the investment in subsequent additions, it is manifestly proper to calculate the fair return upon this basis, at least for a reasonable period. In the present case, the interval has been one of unusual circumstances incident to war, and of especially high costs, and there is no reason why there should be substituted for the official appraisal a hypothetical estimate of reproduction cost under abnormal conditions reaching an amount vastly in excess of the actual investment."

The Supreme Court of the United States in the cases above referred to, and numerous other cases, clearly has left the way open for this Commission to avail itself of all possible evidences as to the reasonable present value of the property of this company used and useful in the business of furnishing gas to its patrons; and in exercising full discretion and latitude to this end this Commission clearly has the approval of the author of the celebrated Minnesota decision.

## Replacement Cost.

Mr. Musson, the Commission's engineer in this case, submits as the replacement cost of the property, using quantities as of April 1, 1920, the prices as of August 1, 1921, the figures of \$2,693,492 (Musson's Exhibit No. 2). This amount includes, according to the practice of the company in reporting expansion of its plant from time to time, and consistent with the witness's testimony (Record, p. 39) costs other than for physical plant slightly in excess of 20 per cent, these costs covering items such as engineering during construction, superintendence, legal expenses, injuries during construction, etc. Deducting 20 per cent for such items, or \$434,350, the replacement value of the physical plant is found to be \$2,258,642. A further deduction of \$46,802 for omissions and contingencies improperly included in plant account makes the figures \$2,201,842. The Witness states the additions and betterments were placed upon the property between April 1, 1920, and August 1, 1921, amounting to \$111,597, deducting 20 per cent, as in the case of the entire plant, for costs other than physical, the actual cost of the plant added during the period referred to becomes \$87,319, and it may be assumed that this actual cost would not be materially different from the replacement cost of the same items of property as of August 1, 1921. This leaves \$2,299,161 as the replacement value of the physical plant. Net construction costs August 1, 1921, to October 31, 1921, reported by the company add \$30,850 and this figure becomes \$2,319,911.00.

This plant includes (Record p. 30) property not used and useful in serving the public aggregating in replacement value the sum of \$46,570 (Record p. 30) which is to be deducted, and leaves \$2,273,341 as the replacement value of the plant used and useful.

Testimony shows (Exhibit- 2-B and 2-C, Record p. 51) that the plant includes various items of property paid for by consumers who have not been reimbursed by the company. The Commission holds the company not entitled to a return upon property in which it has no investment. Exhibits 2-B and 2-C show money collected from consumers for extensions between July 1, 1914, and February 1, 1921, amounting to \$10,887.43 and money advanced by consumers between June 30, 1917, and November 30, 1921, not subject to return to the consumer, amounting to \$5,877.25, or a total of \$16,764.68. The same exhibits show \$13,916.89 collected from consumers for extensions subject to refund according to the terms of contracts entered into between the company and each consumer, most of which contracts provide for the return to the consumer of 20 per cent of his gross bill for gas annually for four years, any balance unrefunded at the expiration of such time to be cancelled, and the extension to become the property of the company. The return of 20 per cent of the gross bill for four years would be equal to the return of 80 per cent of the gross bill for one year. The Commission considers reasonable the conclusion that not in excess of two-thirds of the amount of these conditional payments by con-

sumers will be refunded within a four years' period, which leaves one-third of the investment represented by such amount absorbed by the company without cost, which proportion of \$13,916.89 or \$4,639.29 is to be added to the amount added to plant during the time specified which does not represent investment by the company, and makes the full amount \$21,404.97. Should the company at any time show that the Commission's conclusion as to the result of the refund contracts is unfair to the company any injustice, occasioned thereby, will be corrected. Notwithstanding the fact that Exhibits 2-B and 2-C were introduced in response to the request of the Commission for complete information as to what part of the plant had been provided by patrons, and that the practice of financing extensions in this manner is proven, the company did not offer any figures touching this subject as of a period prior to June 30, 1914. However, the figures furnished are found to be 3.5 per cent of the additions and betterments to the plant since June 30, 1914, and to indicate conclusively the trend or proportion of such investment in the property as a whole. Application of such percentage to the investment already developed shows the full amount of plant so financed to have cost \$79,566. It is clear that the company is not justified in capitalizing investment of this character, and it is fair to deduct the amount thereof. By this process we find the present reproduction value of the property used and useful, paid for by the company, to be \$2,193,775 as of November 1, 1921.

But it is the replacement value as of the present date, the date of hearing, with which the Commission is concerned, and testimony shows that there was a marked decline in several major factors of the plant valuation between August 1 and December 31, 1921.

Services, main and distributing lines, meters and regulators, were the subject of testimony in this connection, as also was the element of labor entering into these items of plant. Mr. Musson testified (Record p. 27) that there had been a reduction of 10 per cent in pipe such as was used in this plant since August first. He said that meters were down ten per cent, admitting, however, that while he had quotations supporting this statement as to three kinds of meters

149 he did not have any quotations as to the H. & H. meter, of which this company had in service about 11,000 out of 16,000 meters. He said regulators were down ten per cent. He stated that his quotations on pipe prices were furnished by supply houses. Another witness, A. F. Binns, a contracting plumber in Oklahoma City, testified that the price of pipe (Record Page 110) had declined more than was stated by Mr. Musson, and submitted figures as to prevailing prices at which he could buy pipe in Oklahoma City (Binns' Exhibits 1 and 2).

It should be observed that discrepancies between price quotations secured by engineers and those secured by contractors probably are due to the fact that one is a potential customer of a supply house and secures quotations constituting a bid for business, while the other is well known to the dealer making the quotation, not as a potential customer, but as one whose use of the figures given is a matter of importance to other potential customers, the public

utilities, who are interested in having the engineer receive and use high rather than low price quotations.

The witness A. F. Binns is in the business of buying and laying gas pipe on both large and small projects, and is an extensive and constant employer of the class of labor used in such work. He testified that he had information as to the costs of pipe and labor as of the present day. The figures submitted in Mr. Musson's testimony (Record Page 27) and Mr. Binns' Exhibits 1 and 2 were as follows:

Size pipe.	Musson (page 27). cents per ft.	Binns' Exhibit 1, retail. cents per ft.	Binns' Exhibit 2, 1 carload, cents per ft.
2 in.....	20.	17.09	13.31
3 ".....	41.3	35.34	27.50
4 ".....	62.7	53.63	42.26
6 ".....	111.	94.46	74.43
8 ".....	152.	135.50	103.70
10 ".....	195.	176.60	135.91
12 ".....	273.	248.40	191.11

Mr. Binns testified that the figures applied to screw-end pipe and that he could buy plain-end pipe such as is most commonly used in gas construction work, not only generally but in Oklahoma City, at 10 per cent lower cost, and that he could get a further concession of 10 per cent by buying pipe in lots of fifteen cars or more.

This point was made clear in the record as follows:

(Record, page 114:)

"Mr. Snyder: Suppose you were buying that in as many as fifteen or one hundred carloads at a time. What would you get it for?

A. Possibly 10% discount.

Q. I am afraid I don't know how to ask you this question, but is there some difference between these prices and those heavy couplings?

A. Sure there is a difference of 10%. The pipe is prepared for welding and screw pipe is different. If it is for welding the prices are 10% lower. But this is for screw pipe.

150 Q. So that the prices for the kind they generally use here is 10% off of this?

A. Yes sir.

Q. Then if you buy in large numbers of carload, you would get a 10% discount off of that?

A. Yes sir.

Q. That is all?

A. If you want to buy that amount of stuff, however, you would go to the mills for it.

Q. This is a quotation to you today from whom?

A. Crane & Company.

Q. They maintain a local distributing house and are large dealers in this kind of stuff?

A. Yes sir.

Q. That is all.

## Cross-examination.

By Mr. Reiss:

Q. Did Mr. Georgia, the Manager of Crane & Company, tell you that he would give you 10% discount from this if in fifteen carload lots?

A. Yes sir.

Q. Mr. Georgia told you that himself?

A. Yes sir.

Q. And also 10% off on the pipe for welding?

A. Yes sir.

Q. That's all."

Figures compiled from Mr. Musson's exhibits show that the reproduction of the property involved in this case would require probably four hundred cars of pipe. Reproduction cost of the pipe should be the cost on the most favorable basis at which pipe in large quantities could be procured. An analysis of these figures, therefore, shows that the price of pipe today has declined fully 33½ per cent from the prices used by Mr. Musson, and this percentage of decline will be adopted in arriving at the present value of the property. Mr. Musson's statement that meters have declined 10 per cent will be accepted and the reduction applied to one-third of the meters of the company, the testimony showing that the reduction was not applicable as to about two-thirds of the company's meters. Mr. Musson's statement that regulators were down 10 per cent was not questioned.

Testimony was conclusive also as to the decline in the cost of labor between the war-time labor situation and the present day. Mr. Musson stated that he used the scale prevailing in 1920, although the highest in seven years, because he was informed that the company was actually paying that scale. Question as to the cost of the labor factor in the value of this plant was introduced by the company's attorney in connection with Mr. Musson's testimony on the price of pipe. Questioned by the company's attorneys as to whether the labor factor in pipe line valuation had declined since August first, Mr. Musson disclaimed information on the point, the record, page 43, reading:

"Mr. Reiss: When you state that there is a reduction from the August first price of 18 per cent in the price of pipe, that doesn't mean a reduction of the entire account because labor is a large item in that account?

151 A. Yes sir.

Q. So the 18 per cent does not apply to the account as a whole, but only to the pipe?

A. That's all—just the pipe."

The next morning the State Labor Commissioner testified as to present labor costs. He stated that common labor was being supplied by employment bureaus under his jurisdiction at from 25 to 50 cents per hour, the average being 35 and 40 cents. He stated

that track labor was being supplied to railroads and the Oklahoma City street railway at 25 cents per hour. When the Labor Commissioner began his testimony the attorney for the Gas Company stated in the record (Page 101) that his company was now paying 40 cents per hour as against 50 cents which was paid at the time the valuation was made. The same attorney who had shown that a decline of 18 per cent in pipe did not apply to labor now stated that the company's reduction in labor costs amounted in fact to 20 per cent.

Minta De Ford, Office Manager for A. F. Binns, already referred to, testified that she employed labor for Mr. Binns' business and that there was an abundant supply of labor available at from 30 to 50 cents per hour (Record p. 109). Mr. Binns (Page 110) stated that reasonably efficient common labor could be obtained in Oklahoma City at the present time at from 30 to 45 cents per hour, according to class of labor desired, and that ditch diggers or "pick and shovel" men, as he termed the character of labor necessary to lay gas pipes, were plentiful at from 30 to 35 cents per hour. He said he was turning away such labor daily.

From this testimony the Commission concludes that there has been a decline of at least  $33\frac{1}{3}$  per cent in the cost of labor since war costs prevailed, which Mr. Musson used, and while the Commission does not find that 30 to 35 cents an hour is a living wage at the present time, it is compelled to apply, in arriving at the replacement cost of this property, the wage scale prevailing generally and available for work of the character involved herein.

With adjustment for cast iron pipe and fittings, which the Commission is advised are not affected by the price decline, and applying the reduced material and labor costs thus developed, the item of service is reduced \$47,920, mains and distributing lines, \$316,221, meters and regulators, \$8,968, and the reproduction value of the property used and useful, paid for by the company as of December 31, 1921, is found to be \$1,820,666. Adding to this amount 20 per cent to cover intangible factors of value which the Commission has heretofore found to be a reasonable allowance for such factors, the complete replacement cost of the gas property in this case is found to be \$2,184,799. The addition last mentioned is intended to cover all reasonable claims for working capital, going concern value and all the usual intangibles contended for in a replacement valuation and those specifically enumerated by the witness, Mr. Musson, as engineering, superintendence, injuries during construction, legal expenses, interest during construction, etc. Depreciating this figure in the same percentage used by Mr. Musson in arriving at his replacement value as of the present time, the figure representing this value becomes \$1,704,143.

#### Original Cost.

The Commission has given full consideration to all pertinent facts, figures and theories offered in connection with the valuation of the property involved in this case. It has considered that a very sub-

stantial part of this plant has been constructed at costs higher than today's replacement costs, and it has not considered it just or reasonable to deny the utility the right to a return upon such items of property at the value of the investment they actually represent. It has weighed in the balance of reason and fair judgment the relation of a public utility business to business of other character, and has given study to the fact that while public utilities are restricted by

law as to their earnings and may not at will ride upon a tide  
152 of upward selling prices such as this country witnessed and experienced during and following the war, they may in a year like that just ended, or, probably, like that just begun, demand their reasonable return upon the present value of their property used and useful in serving the public, while thousands of business concerns of other character are crashing, tottering on the brink of bankruptcy or "getting by" with little or no earning at present and a discouraging prospect ahead.

In the light of these conditions, and others that might be set forth, the Commission has concluded that a fair and liberal rate basing value of the property involved in this case in the original cost as shown by the Commission's engineer (Musson's exhibit No. 1) without depreciation but with certain modifications and amplifications which, for reasons which will be fully set forth, the Commission finds proper.

The original cost found by Mr. Musson as of August 1, 1921, was \$1,846,845. (Record, Cause 4302, p. 38.) This includes certain items of property required or constructed from time to time which are not now used or useful in supplying gas to the patrons of the company. These items include furnaces, boilers and accessories, steam engines, water gas sets and accessories, purification apparatus and accessory equipment and works, aggregating in present value the sum of \$27,149. (Record, Cause 4302, p. 30.) Under no theory of valuation should property not used and useful be included in the valuation for rate making, and this item will be deducted, leaving the cost of the property used and useful, according to Mr. Musson, \$1,819,696.

Certain items proper to be included, but uncertain as to amount, have been included, these items including engineering superintendence, injuries during construction, legal expenses, interest during construction, etc., which the engineer testified (Record, Cause 4302, p. 39) amounted to slightly in excess of 20 per cent of the value of the property. In order to arrive at the cost of the physical plant, stripped of items of the character enumerated, the Commission will deduct 20 per cent, or \$293,606, which leaves the figure of \$1,526,090 as representing the "bare bones" of the property August 1, 1921. This figure, however, includes \$37,499 for omissions and contingencies, which must be deducted and leaves \$1,489,641.

This figure, however, it will be remembered, includes the items of plant paid for by patrons of the company, reference to which has been made in connection with the replacement value of the property. Deducting three and one-half per cent on account of investment of this character on which the company is not entitled to a

return regardless of the theory of valuation adopted, we have left, as the "bare bones" of the plant, used and useful, paid for by the company, at original cost, the sum of \$1,437,504, as of August 1, 1921. To this is to be added net construction costs from August 1, 1921 to October 31, 1921, amounting to \$30,850, making \$1,431,504. Allowing 20 per cent for intangible factors of value, as was done in developing the final figure of replacement cost, there is to be added \$293,671, which gives us as the final original cost of the property August 1, 1921, the sum of \$1,762,025, and this figure will be and is adopted as the rate basis in this case, subject to readjustment on account of earnings heretofore appropriated but which should have been carried in a depreciation reserve fund the amount of which is hereafter shown.

The Company claims as an operating expense two and one-half per cent on gross earnings paid each year to an engineering and management corporation. This item the Commission, in arriving at the rate fixed, has disallowed, for the reason that the evidence in this case fails to show any services of value to the local company rendered by such management company. This subject is discussed in the record, Cause 4304, at Page 66.

Just what this 2.5 per cent payment has meant to the patrons of the Oklahoma Gas & Electric Company is indicated by a review of what it has meant to the recipient of this payment during seven years, as shown by the reports to the Corporation Commission. The gross and net revenues reported for the Oklahoma City Division for the fiscal years ended June 30th from 1915 to 1921, inclusive, are as follows:

			Gross.	Net.
Year ended June 30,	1915.....		\$735,979.39	\$151,006.72
" " " "	1916.....		757,662.32	152,369.78
" " " "	1917.....		860,925.93	181,055.58
" " " "	1918.....		1,024,841.47	183,843.96
" " " "	1919.....		1,679,326.29	327,783.18
" " " "	1920.....		1,457,749.04	244,084.95
" " " "	1921.....		1,670,302.78	268,214.93

It was disclosed that this hearing that the payment of 25 per cent was made during all of that period. The amount was charged to operating expenses and does not appear in the net revenues shown above.

The amount of these payments by years was: Year ended June 30, 1915, \$18,399.48; 1916, \$18,940.56; 1917, \$21,523.15; 1918, \$25,621.04; 1919, \$41,983.16; 1920, \$36,443.72; 1921, \$41,757.56; total, \$204,668.67. These amounts deducted from the operating expenses and added to the net earnings would increase the net revenues to the following amounts: Year ended June 30, 1915, \$169,406.20; 1916, \$171,310.34; 1917, \$202,578.73; 1918, \$209,465.00; 1919, \$369,766.34; 1920, \$280,528.67; 1921, \$309,972.49; total, \$1,713,027.77.

The effect of the foregoing would be as follows:

The average annual gross revenues for the seven years ended June

30, 1915 to 1921, inclusive, was \$1,169,535.32. The average net revenue as reported by the company was \$215,479.87. The average two and one-half per cent payments per annum was \$29,233.33. Adding this to the net income reported by the company gives \$244,713.20 per annum. The average investment during the seven years enumerated was \$1,375,330.61. The annual average return for dividends, interest, depreciation and other purposes was 17.8 per cent. During the whole of that period the Commission recognized 8 per cent per annum as a reasonable return for dividends, interest, etc., and 5 per cent per annum as a fair basis upon which to accrue a fund for depreciation, obsolescence, etc., making a total recognized to be fair and equitable of 13 per cent per annum. This would yield a return during the seven years stated of \$1,251,550.46. Deducting that amount from the actual returns as reported by the company leaves a surplus of \$256,808.64. Adding to that the two and one-half per cent of gross revenues would bring the surplus to \$461,477.31. The depreciation actually collected by the company for the purpose of maintaining the integrity of its original investment amounted to \$481,365.72 during the seven year period. This will be deducted to develop the final rate base, and the same becomes \$1,280,660.

The values used in the foregoing computations showing the effect of the 2.5 per cent payment during the seven years were arrived at by taking the original reports of the company as of June 30, 1914, and adding thereto their completion reports from year to year. From the investment thus reported all overheads such as engineering, superintendence, interest during construction, etc., were eliminated and in lieu thereof 20 per cent was added to the actual physical value of the property and the cost of its installation. These values have no relation to the value arrived at as a rate base in this case.

The foregoing figures give assurance that operation of the property involved in this case, has, during the years past, been amply profitable to completely amortise all items of plant which have been excluded from consideration as a part of the earning property because not now used and useful in furnishing gas to the public. The same figures show that ample funds for the maintenance of this property in good condition have been available heretofore, and that leakage of two million cubic feet per year per mile of three inch main equivalent (or 20 per cent) as shown by the testimony should not exist and should not hereafter be permitted; and hereafter leakage in excess of one million cubic feet per mile of three inch main or its equivalent (10 per cent) will be held by the Commission to be excessive.

154 With an operating ratio of about 80, which this company has enjoyed heretofore, a payment of 2.5 per cent gross earning is 12.5% of the net, and can be defended only by a clear and definite showing of value given which is not available in the record in this case.

The payments made to the engineering and management company by the Oklahoma Gas & Electric Company in years past, dis-

closed in this case, have, as the Commission's investigation of the records demonstrates, made the return on the actual cost of the property from year to year, with due allowance for intangible values, more than a reasonable one. The Commission cannot permit this practice to go longer unrestrained, and will not permit this charge to be made hereafter at least until such time as it can be shown to be reasonable and just.

Summarizing as to values: as heretofore shown, from the present value of the property used and useful, has been deducted that part of the property which has been paid for by patrons and in which the company has no investment, and depreciation that has been allowed and earned but appropriated to their own use and benefit by the owner of the property, either by the payment of excess dividends, or (more likely) by paying for additions and betterments to the property. If, as been assumed likely, this money has been put into additions and betterments, then it has been again included in the rate base on which to draw further dividends. If it has been returned to the owner as excess dividends then it no longer is invested in the property, and in neither event would the public be entitled to continue to pay dividends thereon. All calculations appearing hereinafter involving a rate base are based upon this value of \$1,206,-625, the Commission recognizing this amount as that which the Company still has in the property and which has not been returned to it.

#### Cost of Financing.

During the year 1921 a program of refinancing the Oklahoma Gas & Electric Company was accomplished, according to the testimony of the manager of the rate department of the engineering and management corporation, as a result of which interest charges become a burden upon the operation of this company, to which attention must be directed. The problem before the Commission is best stated by the witness himself at page 91 of the record. In response to a request by the company's attorney that the witness develop the cost of money to the company at the present time the witness said (Record p. 91, 92 and 93):

A. "Early in 1921, the Oklahoma Gas & Electric Company found it necessary to refinance in a large measure for itself and the Muskogee Gas & Electric Company, and it put out its refunding mortgage fund of the par value of \$6,000,000, and it also put out its ten year notes amounting to two and a half million dollars, making a total of eight and a half million dollars. The discounts and expenses incident to this financing amounts to one million three hundred and three thousand one hundred and forty two dollars and seventy-one cents (\$1,303,142.71). The net amount realized from the issues of securities was \$7,196,867.19. The bonds were 7.5% bonds and the notes bear 8%. The annual interest on the bonds at 7.5% amounts to \$450,000.00. The annual interest on the notes amounts to \$200,000.00 so that the total annual interest charges on these securities

amounts to \$650,000.00. The amount of discount and expenses spread over a period of twenty years amounts to \$65,157.14 per year, making the total of annual interest on this financing covering both the annual interest charges and the annual portion of discounts and expenses, \$715,157.14. The total annual interest charges amounting to \$650,000.00 is equivalent to 9.3% upon the amount realized from these issues. The total annual interest charges with the annual portion of the discount and expenses of financing amounts to 9.94% of the amount realized from these issues.

In reply to Chairman Russell's question as to what the purchases of the securities were, the witness answered:

A. As far as the question of the Chairman is concerned, I am unable to tell the course through which these securities pass. All I know is that the records show that that is the amount realized, as I have stated. The amount taken by the different financial houses who entered into those transactions of financing these properties or furnishing the money upon those securities, I am unable to say about.

155 Chairman Russell: The Commission thinks the records should show these things, and that this was a necessary transaction, and that these securities passed into the hands of adverse holders and not to the holding companies. We realize financing is being done on a great deal better terms today than at that time, and if that is not true there should be some testimony to remove that idea.

A. Of course this particular financing had to be done at that time, and I believe that that was generally understood that the financing could not at that time be deferred. No one knew then that it would be better now.

Mr. Snyder: Conditions are better now than then aren't they?

A. Generally they are.

Q. Who underwrite those issues if you know?

A. I know there were a number of financial houses that entered into the syndicate to take these securities, but how much of them each took I am unable to say."

Questioned as to whether this refinancing program had not been put through at the most disadvantageous time that has existed in years the witness stated that it was at least within a short time of the worst period. Later in the hearing (Record Page 158) this matter was again referred to by counsel as follows:

Mr. Snyder: You will perhaps agree that the mortgage or Deed Trust under which your recent financing was done, has a provision—

Mr. Reiss: That instrument speaks for itself, and I think it should be made a part of the records.

Mr. Snyder: I didn't know that it was a part of the records.

Mr. Reiss: It has or we will make it so.

Mr. Snyder: I want to know whether your bonds have a provision whereby they can be retired.

Mr. Reiss: That Deed of Trust has this provision under certain conditions.

Mr. Snyder: So in the event money rates decrease you can save the Gas Company the interest you are paying on those bonds?

Mr. Reiss: The agreement speaks for itself, and it is in the record."

The letter and the agreement referred to are not in the record. The attorney for the company referred to them frequently as in the record but the documents were not offered in evidence. A suggestion that they be offered was made but counsel for the Oklahoma City Chamber of Commerce objected as there was no opportunity to cross examine the writer of the letter. (Record Page 98.)

In the face of the foregoing testimony relating to the refinancing program the Commission cannot approve, as a proper burden upon the public that this company serves, the tremendous interest charges claimed. Without definite information on this point the Commission is unable to determine what interest charges, if any, do in fact constitute a proper charge against operation of the Oklahoma company, and cannot approve such charges as a proper operating expense.

Further, the Commission takes judicial knowledge of the fact that any necessary program of refinancing can be put through at the present time on terms much more favorable than were accepted in the program above referred to, that even were the profits on the securities marketed in 1921 going wholly to adverse holders the Commission would not be justified in permitting such program to stand at the present time, in view of the admission of the company's attorney that the securities issued are subject to recall and reissue whenever more favorable terms are to be had.

#### Taxes.

There is charged against the property of the Oklahoma City division of this company, according to the monthly reports for the twelve months ending October 31, 1921, a total amount for taxes in the sum of \$64,219.00. In connection with this case and in connection with Cause No. 4142, the valuation case, the Commission has endeavored to secure information as to the character of these taxes,—to determine whether or not the amount includes federal income taxes, and, if so, how much, the Commission being of the opinion that federal income taxes are not a proper charge against operation, but that a corporation, like an individual, is obligated to pay the income tax out of net income. No information upon which a conclusion on this point could be based has been furnished and the Commission cannot, from information available in this record, determine what allowance should be made for taxes properly chargeable to operation of the property. Should the full amount claimed

to be allowed, the necessary earning to compensate therefor would be 5.5 per cent. While the Commission does not approve the amount in full, it is of the opinion, and finds, that the rates prescribed herein will prove ample to take care of the necessary proper allowance for taxes.

### Leakage.

As heretofore stated, the Oklahoma Gas & Electric Company, prior to the promulgation of Order No. 1886 by this Commission was buying gas from the Oklahoma Natural Gas Company under what was known as a proportional contract. The Oklahoma Natural Gas Company delivered the gas to the Oklahoma Gas & Electrical Company at the town border of Oklahoma City and accepted in payment therefor two-thirds of the gross collections of the Oklahoma Gas & Electric Company for gas sold for domestic uses and three-fourths of the gross collections for gas used for industrial purposes. Under this arrangement the burden of gas unaccounted for, usually referred to as leakage, fell upon the Oklahoma Natural Gas Company, notwithstanding the fact that it had no responsibility for or control over the lines conveying the gas from the city border to the consumer.

Under the city gate rate plan established by Order No. 1886 the gas is measured at the city gate and paid for by the Oklahoma Gas & Electric Company at a specific rate per M cu. ft. This throws the entire burden of the cost of unaccounted for gas upon the Oklahoma Gas & Electric Company, and this factor has a substantial bearing upon the result of operation of the business of this company. The superintendent of the department of this company testified (Record Page 85) that the unaccounted for gas in the Oklahoma City division for the year ending August 31, 1921, was 20.5 per cent of the gas received — the city gate. He stated that the same figures for the year ending September 30th would be 21.8 per cent; for the year ending October 31st, 21.3 per cent, and for the year ending November 30th, 21.8 per cent. It is fairly well established, if these figures are dependable, that the loss of gas in Oklahoma City at the present time is not less than 20 per cent of the gas received at the city gate.

The Kansas Public Utilities Commission was stated in testimony in this case to have found that a reasonable standard of leakage would be 200,000 cu. ft. per year per mile of 3 inch main or its equivalent. (Record Page 147).

The Commission's gas engineer, while not a witness in this case, has testified in other cases that in his opinion a sufficiently low standard of leakage would be 500,000 cu. ft. per year per mile of 3 inch main, or its equivalent, and it was agreed by counsel for the company (Record Page 126) that the record should show that were this witness available he would so testify, the company not agreeing, however, to the correctness of his judgment in the matter. The leakage testified to by the company's gas superintendent is 2,000,000

cu. ft. per mile of 3 inch main or ten times as great as that said to have been approved by the Kansas Commission and four times as great as that approved by this Commission's engineer. (Record Page 151.)

Without a survey of the situation in Oklahoma City to determine the condition of the plant and cost of repairs to reduce leakage it is impracticable to establish an arbitrary maximum limit to govern the allowance for gas unaccounted for. The rate to be fixed by the Commission in the present case, will, however, compensate the company for loss of gas shown as being lost at this time, and is prescribed with the definite provision and requirement that revenues in excess of a return of 8 per cent on the property be carried in a depreciation reserve account, which shall be fully accounted for at all times and against which shall be charged such items of expense involved in the correction of the leakage situation as may not be properly and consistently charged to current maintenance.

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### Depreciation Reserve.

Testimony shows (Record Page 156) that while the Company has on its books what it terms a depreciation reserve account, it maintains no depreciation reserve in fact and the account has not been carried regularly, repair or maintenance bills not being charged to this amount but to current expenses. The Commission will require henceforth that a depreciation reserve account be carried and maintained, all replacements being charged against such account and all charges against and balances in said account being reported to the Commission regularly in current reports of revenues and expenses.

### Computation.

For the purpose of determining the results of operation of the Oklahoma Gas & Electric Company in Oklahoma City, Yukon, and Britton, known as the Oklahoma City division, and which have been included in the engineers' valuations of the Oklahoma City division property, investigation has been made into the reports of revenues and expenses furnished by the company for the twelve months ending October 31, 1921. The reports used were the monthly report for October, 1921, carrying figures for that month and for the corresponding month in 1920 and for the accumulative period, January to October inclusive, in 1921 and 1920, and the monthly reports for December and November 1920.

In making computations involving the total amount of gas sold the quantity of gas has been determined by applying the rate at which the same was sold to the amount of money received for the prevailing rate. From November 1, 1920, to March 31, 1921, the rate for domestic gas was 48 cents, for so-called special gas 40 cents and for industrial gas 35 cents. During April, May and June, 1921, the domestic rate was 40 cents, the special rate 32 cents and the industrial rate 25 cents. During July, August, September and October, 1921, the domestic rate was 42 cents and the industrial rate

25 cents. There was no special rate in effect during these months.

It would seem reasonable that in estimating gas to be sold in 1922 increased sales due to increase in number of consumers be taken into consideration, this factor being  $5\frac{1}{2}$  per cent and being developed by determining the average increase in consumers during the twelve months' period November 1920 to October 1921 inclusive. The number of consumers at the expiration of the twelve months' period exceeded the number a year previous thereto by more than 10 per cent, but the average number only during the entire twelve months was used. It can be assumed that at least this number will be served throughout 1922. No consideration should be given the fact that the number will increase during this year, such increase being allowed to compensate the company for increase in the value of its property during the same period. Consumers November 1, 1920, numbered 17,235. The number October 31, 1921, was 18,963. The number developed by averaging the number of the twelve months respectively was 17,966. However, notwithstanding the increase in number of consumers during 1921, there was a slight decrease in domestic gas sales compared with 1920. While the Commission fully believes this decrease to be due to the mild winter of 1920-1921 compared with 1919-1920 this highly probable source of additional business and increased revenue will be disregarded in computing the probable results of operation in 1922, as the increased consumption which might be assumed is likely to be affected by the increased rate.

Conclusions as to the result of operation in 1922 at the rate to be prescribed herein have been developed on the basis of leakage amounting to 10 per cent of the gas received, or one million cubic feet per mile of 3 inch main, assuming that industrial business in

1922 will be the same as during the twelve months' period investigated. Estimates also have been made using 20 per cent leakage and 10 per cent leakage, assuming that there will be no industrial business whatever. Domestic gas purchases in 1921 amounted to 2,328,244 M cubic feet. Domestic gas purchases for 1922, allowing for the fact that with leakage of ten per cent the sales are but nine-tenths of the purchases, will be 2,586,937 M cubic feet and will cost, at 25 cents per M the sum of \$646,734. The part of this gas that is sold, which will be 2,328,244 M cubic feet, will bring, at 45 cents per M \$1,047,709.80.

Manufacturing gas, according to the same processes of computation, will cost, at 20 cents per M \$145,853.00 and will bring 25 cents, \$161,084.00.

Special gas, so called, which sells at the domestic rate, being industrial gas used up to a certain quantity, will cost \$86,260.00 and will bring \$139,742.00.

Thus the cost of all gas for 1922, assuming 10 per cent leakage, will be \$878,847, and the gross revenue will be \$1,351,536.

Operating expenses are reported to the Commission under three groups of accounts, designated "plant expenses," "distribution and maintenance expenses," and "general expenses," respectively. Plant expenses, as applied to the property involved in this case, consists

of the cost of gas only. The other designations are self-explanatory.

Operating expenses aside from the cost of gas will be, assuming (which should not be true) that operating costs will be as high as in the twelve months ending October 31, 1921, \$170,595.86. From this amount, however, is to be deducted \$33,375.73, being two and one-half per cent of gross earnings during the twelve months' period, paid to the Engineering and Management Company and not allowed as an operating expense by the Commission, which leaves \$137,220 as the operating expense aside from cost of gas and makes the total operating expense, including cost of gas, \$1,016,067. Total revenues as already developed will be \$1,351,536, which leaves \$335,469 as the net operating revenue, which amount will be 26.2 per cent on the rate basing valuation of \$1,206,625. This amount will pay in full the taxes as charged, at 5.3 per cent of the valuation, whether or not it is in full a legitimate charge, and leaves 20.9 per cent return for interest and depreciation.

By identical processes of computation it will be found that if, as some of the gas company representatives profess to fear, industrial business amounts to little or nothing in 1922, net operating revenue for the year for domestic business alone will be found to be \$263,755, and the return for interest and depreciation after paying in full taxes as charged this year 15.2 per cent.

Similarly, if it be assumed that leakage is to be in 1922 as it is testified to have been during the past year, 20 per cent, and that there will be no industrial business, identical processes of computation will show the net operating revenue on domestic business alone to be \$182,913, and the return available for interest, depreciation and taxes 15.1 per cent, or, after paying the taxes in full as above, 8.9 per cent.

But there is today, and will doubtless continue to be, industrial business in a substantial amount, and the Commission believes the rates herein prescribed will be ample to provide, not only for dividends but 5 per cent depreciation reserve upon the full value of the property after the payment of 8 per cent upon the fair value of the property, less the amount shown to have been already appropriated and used by the owners. The above rates for dividends and depreciation are hereby approved and allowed.

160 As already stated, the record shows that the property involved in this case has been and is being maintained in condition to give service, all replacements and charges properly chargeable against depreciation reserve having been taken care of out of current revenues. The Company has been at liberty at all times to have carried a depreciation reserve in fact and to have made a complete and clear showing in support of the necessity therefor. But it has elected instead to handle the matter as has been stated. In view of this fact a consistent or valid claim can scarcely be made that an allowance for depreciation for the twelve months ending October, 1921, should be made. However, the testimony shows industrial business to be improving and the rate employed in the foregoing computations is more than sufficient to care for legitimate charges to operation, and, the Commission expects, will yield even

under the more unfavorable conditions suggested, a modicum of return to be carried into the depreciation reserve account during the coming year, which, if efficiently handled, should show substantial progress toward an operating result less shrouded in uncertainty.

*Order.*

Wherefore, the Commission being fully informed in the premises and having given due consideration to all the facts in the record,

It is ordered that rates for gas in the City of Oklahoma City, Yukon, Britton, Bethany and Putnam City, shall be 45 cents per thousand cubic feet for gas used for domestic purposes and 25 cents per thousand cubic feet for gas used for industrial purposes; provided that the first 500,000 cubic feet of gas for industrial purposes shall pay the domestic rate.

It is further ordered that a depreciation reserve account be established forthwith by the Oklahoma Gas and Electric Company and that all amounts herein allowed and earned for depreciation over and above 8 per cent on the rate base be credited to said account, and that complete accounting for all charges against and balances in said reserve account be made to the Corporation Commission of Oklahoma henceforth in current reports of revenues and expenses.

It is further ordered that so long as a city gate rate of 35 cent per thousand cubic feet is imposed upon the Oklahoma Gas & Electric Company by authority of the United States District Court or other Federal Court, thirteen cents per thousand cubic feet may be collected from domestic patrons of said company in addition to the domestic rate herein prescribed subject to refund as per previous order and bond.

Supplemental orders are in preparation prescribing rates for Enid, El Reno and Muskogee, and will be announced as soon as completed.

This order shall be in full force and effect as of and from January 1, 1922.

Done at Oklahoma City, Oklahoma, this the 18th day of January, 1922.

CORPORATION COMMISSION OF  
OKLAHOMA,  
CAMPBELL RUSSELL,  
*Chairman.*  
ART. L. WALKER,  
*Commissioner.*

Attest:

G. F. SMITH,  
*Secretary.*

## 161 Corporation Commission of the State of Oklahoma.

Cause No. 4302. Order No. 1999.

In the Matter of the Adjustment of Gas Rates of THE OKLAHOMA GAS & ELECTRIC COMPANY in Oklahoma City, Enid, El Reno, Yukon, and Britton, Oklahoma.

*Supplemental Findings of Fact and Order.*

This Commission has heretofore, to-wit, on the 18th day of January, 1922, issued its Order 1995, establishing rates for gas service in the Oklahoma City Division of the Oklahoma Gas & Electric Company. Rates for gas in the cities of Enid and El Reno also involved in this cause, and for Muskogee involved in Cause No. 4301, were not fixed in said order. The present supplemental order will establish rates for the cities of Enid and El Reno. Rates for Muskogee will be further deferred.

All findings made by the Commission in connection with Order No. 1995, which are general in character, effecting the relations between the Oklahoma Gas & Electric Company and any other corporation, are held applicable to the issues determined by the present order and are embodied herein without restatement. The same applies to findings as to dividends and depreciation.

**Enid and El Reno.**

The Commission does not have available as to the Enid and El Reno properties an inventory and appraisal made by its own engineer, such as was available as a basis for Order 1995. The Commission has available, however, reports furnished by the company from time to time purporting to give the historical cost of the property. Such reports reflect, in the opinion of the Commission, the present fair value of the property used and useful in furnishing gas for Enid and El Reno, consideration being given to the fact that as in the case of the Oklahoma City property a substantial proportion of the property existing at present was constructed or installed during the prevalence of abnormally high costs of material and labor, and that production new cost of such part of these properties today would be lower than the investment that they actually represent. The reproduction new value as of the present date, less depreciation, would not differ materially from the value herein used.

Investigation of the companies' reports referred to and elimination from the figures therein given of all factors except the physical plant, gives as the cost thereof as of December 31, 1920, the amount of \$333,975.81 for the Enid property and \$186,411.05 for El Reno. Addition of 20 per cent for overheads and intangibles add \$66,795.16 to the Enid figure, from January 1st to November 30th, 1921, add \$26,173.58 to the Enid value and \$6,986.82 to El Reno,

giving the following figures as the rate basing valuations for the two cities respectively: Enid, \$426,944.55, and El Reno, \$230,680.08, and these figures will be adopted.

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Enid.

Computation of sales of gas by applying the prevailing rate at various times during the twelve months ending October 31, 1921, to the revenue reported for the respective periods under consideration, shows total gas sales in Enid for said twelve months to have been 538,532 M cu. ft. Assuming leakage at 10 per cent for the coming year, total purchases of gas for 1922 will be 598,369 M cu. ft. Assuming that industrial sales in 1922 will equal those of 1921, and deducting the amount thereof, 116,267 M cu. ft. from total purchases of 1922, we find the domestic gas purchases for 1922 to be 482,102 M cu. ft. At 25 cents per M cu. ft. this gas will cost \$120,525. The company had a general expense of \$29,837, and distribution and maintenance expense of \$8,317, or total expense at Enid of \$158,679, including cost of domestic gas. From this expense is to be deducted two and one-half per cent of the gross revenue earned in the twelve months ending October 31, 1921, as in Order 1995, the amount deducted being \$5,653, and leaving \$153,826 as the total expense at Enid, less the two and one-half per cent of gross revenue paid to the engineering and management company. By adding 13 per cent of the rate-basing value of the property to this amount for the interest and depreciation herein authorized, we find the necessary revenue at Enid in 1922 to be \$208,528. This does not provide, however, for the payment of taxes on the property.

The company's reports of revenue and expenses for the twelve months ending October 31, 1921, indicated the payment of \$20,332.20 for taxes. No testimony was furnished, however, showing what part of this amount represented federal or other taxes which the Commission might not be willing to allow as a proper charge against operation, but the company furnished exhibits, said to be copies of tax receipts for real and personal taxes, showing payment of \$17,330.24 in Garfield County, Oklahoma, for 1920, first half of said taxes having been paid December 20, 1920, and the last half June 14, 1921. This amount represents taxes not only on the gas property owned by the Oklahoma Gas & Electric Company in Garfield County but the property used for electric operation as well. The only basis available in this record for apportionment of the amount as between the gas and electric division appears to be Mr. Uhlendorf's summary of valuation of the property of the company in Enid, which appears in Uhlendorf's Exhibit No. 1, page 1, and Exhibit No. 4, page 3, shows the gas property of the company to be 44 per cent of the total. On this basis the amount of the taxes paid in Garfield County chargeable to the gas property would be \$7,625.30, and makes the total necessary revenue for this property for 1922 \$216,153.00.

The domestic gas sales for 1922 at the rate of 50 cents per M cu. ft. will yield \$211,132. Industrial gas in the amount of 116,267 M

cu. ft. assuming industrial business for 1922 at the 1921 figure, will yield, at a purchase price of 20 cents per M and a sale price of 25 cents per M \$5,814, making the total revenue from operation for 1922, \$216,946.00.

In view of the fact that the company has failed to make available in the record a comprehensive analysis of the general expense account, which the Commission considers excessive, and the fact that there is a strong downward trend in cost of materials and labor which should assure reduced operating expenses in 1922 compared with the twelve months ending October 31, 1921, the Commission considers the revenue above developed ample to provide all funds allowable for interest and depreciation and to provide a surplus which should be used in improving the condition of the property and reducing operating costs. The domestic rate for Enid will be fixed at 50 cents per M cubic feet.

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## El Reno.

Processes of computation identical with those fully stated as to Enid have been employed in developing the proper rate to be charged at El Reno. They show the following figures: total gas sales for twelve months ending October 31, 1921, 248,922 M cu. ft.; total purchases for 1922, assuming 10 per cent leakage, 276,580 M cu. ft.; Industrial sales 1921, assumed to be the same for 1922, 59,428 M cu. ft.; domestic gas purchases for 1922, 217,152 M cu. ft., costing at 25 cents per M, \$54,288; general expense, \$16,315, and distribution and maintenance expense, \$3,782, giving total expense, without taxes, of \$74,385. Deducting two and one-half per cent gross revenues for 1921, being the amount paid to the engineering and management corporation, \$2,579.00, the total expense becomes \$71,876. Adding 13 per cent of the rate-basing value, or \$29,988, the necessary revenue, (without taxes) becomes \$101,794. Taxes computed as in case of Enid are chargeable in the sum of \$9,251, making total necessary revenues of \$111,045. Domestic gas sales at rate of 55 cents per M cu. ft. will yield \$104,221, and industrial sales will yield \$2,972, bringing the total revenue to \$107,193.

Question may arise as to whether a rate which falls short of yielding in full the revenue which appears to be necessary can be a sufficient rate, and also (in El Reno) as to why the rate prescribed for that city should be higher than the rate prescribed for Enid. Considering these possible questions it will be stated that in the case of El Reno, as with Enid, the Commission has not received a comprehensive or satisfactory analysis of the general expense account and considers the same excessive. Attention is directed also to the fact that expenses properly chargeable against a depreciation reserve account have not been so charged, repairs and replacements having been paid out of current revenues instead, and that to the extent that such items should have been charged against a depreciation reserve account the showing herein as to necessary revenue is excessive.

The Commission is of the opinion that substantial economies in

operation can be effected at El Reno and the company will be expected to bring about this result.

As to El Reno being a higher rate than that charged at Enid, attention is directed to figures on the valuation of the property used and useful in furnishing gas to consumers in the two cities, respectively. On the reproduction new valuations as of 1920 submitted by the company the Enid property represents an investment of \$139.00 per consumer, while the El Reno property represents a corresponding investment of \$236.00. The reproduction value has not been used as a rate base, but a similar comparison based on the valuations which have been used in determining the rate shows that the Enid property represents a rate basing value of \$102.00 per consumer and the El Reno property \$131.00. Considered in the light of these valuation figures it will be seen that the El Reno rate offers a lower return to the owners of the property than is offered by the rate at Enid. While doubt exists as to why the El Reno investment per consumer should be so much greater than at Enid there is nothing in the record which the valuation in either city can be readjusted except as has been done.

In view of these considerations and all other facts referred to in connection with the Enid situation as applicable to El Reno, the Commission considers that the rate referred to will yield ample operating revenue in 1922 and is justified by the record, and the rate for gas at El Reno will be fixed at 55 cents per M cubic feet.

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*Order.*

Wherefore, the Commission being fully informed in the premises and having given due consideration to all the facts in the record.

It is ordered that rates for gas in the city of Enid, and the Enid division of the Oklahoma Gas & Electric Company shall be 50 cents per M cu. ft. for gas used for domestic purposes, and in the city of El Reno 55 cents per M cu. ft. for gas used for domestic purposes, and 25 cents per M cu. ft. for gas used for industrial purposes; provided that the first 500,000 cubic feet of gas for industrial purposes shall pay the domestic rate.

It is further ordered that a depreciation reserve account be established forthwith by the Oklahoma Gas & Electric Company and that all amounts herein allowed and earned for depreciation over and above 8 per cent on the rate base be credited to said account, and that complete accounting for all charges against and balances in said reserve account be made to the Corporation Commission of Oklahoma henceforth in current reports of revenues and expenses.

It is further ordered that so long as a city gate rate of 35 cents per M cu. ft. is imposed upon the Oklahoma Gas & Electric Company by authority of the United States District Court or other Federal Court, 13 cents per M cu. ft. may be collected from domestic patrons of said company in addition to the domestic rate herein prescribed, subject to refund as per previous order and bond.

Further order is in preparation prescribing rates for Muskogee, and will be accounted as soon as completed.

This order shall be in full force and effect as of and from January 1, 1922.

Done at Oklahoma City, Oklahoma, this the 27th day of January, 1922.

CORPORATION COMMISSION OF  
OKLAHOMA.

CAMPBELL RUSSELL,  
*Chairman.*

ART L. WALKER,  
*Commissioner.*

\_\_\_\_\_  
*Commissioner.*

Attest:

G. F. SMITH,  
*Secretary.*

165 In the Supreme Court of the State of Oklahoma.

No. 12918.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, Plaintiff  
in Error,

*vs.*

STATE OF OKLAHOMA AND THE CORPORATION COMMISSION OF  
OKLAHOMA, Defendants in Error.

*Order.*

Now on this, the 26th day of January, 1922, comes on to be heard the application of the Oklahoma Gas and Electric Company, a corporation, for a supersedeas and an order increasing the rate fixed by order No. 1889 of the Corporation Commission made in cause No. 4302, on July 1st, 1921, in which order the rate to be charged to consumers of gas in the City of Oklahoma City, as in said order provided; and,

Whereas, it appearing that this application for supersedeas was filed in this court on December 17, 1921, on which day this court, in consideration of same, and among other things, ordered that the cause be remanded to the Corporation Commission to be further investigated by the Commission and reported upon by the court; and

Whereas, it now appears that in pursuance to said order the Corporation has made its report to this court, fixing a rate of 45 cents per thousand cubic feet with the further provision that as long as said gate rate of 35 cents per thousand feet is in effect by virtue of order of Federal Court, 13 cents per thousand cubic feet may  
166 be collected subject, however, to refund as per previous order and bond, making a total rate of 58 cents per thousand cubic feet at this time; and

Whereas, the application does not in any way or in any manner attack the finding and opinion of the Corporation Commission filed

herein on January 23, 1922, and no evidence being offered to show that said finding and orders are unreasonable and unjust, each finding will be presumed to be correct, and nothing to the contrary being shown, it is therefore ordered, adjudged and decreed that said application for supersedeas, under the facts herein, and for the increased rate to be charged as in said application set forth, that said application be and the same is hereby denied.

(Signed)

JOHN H. PITCHFORD,  
*Acting Chief Justice.*

167 In the Supreme Court of the State of Oklahoma.

No. 12918.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, Plaintiff  
in Error,

*vs.*

STATE OF OKLAHOMA AND THE CORPORATION COMMISSION OF  
OKLAHOMA, Defendants in Error.

*Order.*

Now on this, the 6th day of February, 1922, comes on to be heard the application of the Oklahoma Gas and Electric Company, a corporation, for a supersedeas and an order increasing the rate fixed by order No. 1889 of the Corporation Commission made in cause No. 4302, on July 1st, 1921, in which order the rate to be charged to consumers of gas in the cities of Enid and El Reno, as in said order provided; and,

Whereas, it appearing that this application for supersedeas was filed in this court on December 17, 1921, on which day this court, in consideration of same, and among other things, ordered that the cause be remanded to the Corporation Commission to be further investigated by the Commission and reported upon by the court; and,

Whereas, it now appears that in pursuance to said order the Corporation Commission has made its report to this court, fixing a rate of 50 cents per thousand cubic feet in the City of Enid and a rate of 55 cents in the City of El Reno, with the further proviso that so long as said gate rate of 35 cents per thousand cubic feet is in effect by virtue of order of Federal Court, 13 cents per

168 thousand cubic feet may be collected subject, however, to refund as per previous order and bond, making a total rate of 63 cents per thousand cubic feet in the City of Enid and 68 cents per thousand cubic feet in the City of El Reno at this time; and,

Whereas, the application does not in any way or in any manner attack the finding and opinion of the Corporation Commission filed herein on the 27th day of January, 1922, and no evidence being offered to show that said findings and orders are unreasonable and unjust, such findings will be presumed to be correct, and nothing

to the contrary being shown, it is therefore ordered, adjudged and decreed that said application for supersedeas, under the facts herein, and for the increased rate to be charged as in said application set forth, that said application be and the same is hereby denied.

(Signed)

JOHN H. PITCHFORD,  
*Acting Chief Justice.*

Endorsed: Filed in District Court on February 6, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

169 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Equity.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma; S. P. Freeling, Attorney General for the State of Oklahoma; The City of Oklahoma City and Its Attorney, C. H. Ruth; The City of Muskogee and Its Attorney, W. P. McGinnis; The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Order to Show Cause.*

On this the 6th day of February, 1922, it is ordered on motion of complainants, due cause appearing, that the defendants and each of them be and appear before the above entitled Court, sitting in the Western District of Oklahoma, at Oklahoma City, Oklahoma, on the 15th day of February, 1922, at the hour of ten o'clock in the forenoon of said day, then and there to show cause, if any they have, why they and each of them should not be enjoined and restrained in the manner prayed.

It is further ordered by the court that a copy of this order be served on said defendants and each of them forthwith, and also upon the Governor and Attorney General five days before said hearing.

JOHN H. COTTERAL,  
*Judge.*

Endorsed: Filed in District Court on February 6, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

170 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY et al., Complainants,

vs.

CORPORATION COMMISSION et al., Defendants.

On this 18th day of February, 1922, it is ordered that plaintiff have leave to file third supplemental bill herein, instant.

171 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA; CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma; S. P. Freeling, Attorney General for the State of Oklahoma; The City of Oklahoma City and Its Attorney, C. H. Ruth; The City of Muskogee and Its Attorney, W. P. McGinnis; The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Third Supplemental Bill of Complaint.*

Come now complainants, the Oklahoma Gas and Electric Company and the Muskogee Gas and Electric Company, and file this their Third Supplemental Bill of Complaint therein, and refer to their First Amended Bill of Complaint and their Second Supplemental Bill of Complaint filed in said cause and incorporate the same by reference as fully as though said First Amended Bill of Complaint and said Second Supplemental Bill of Complaint were set out in full herein, and further respectfully show to the court:

That since the filing of their Second Supplemental Bill of Complaint and on, to-wit the 17th day of February, 1922, the Corporation Commission of the State of Oklahoma filed its findings  
172 of fact, opinion and order fixing the gas rate in the City of Muskogee, Oklahoma; a copy of which said finding and order of the Corporation Commission is hereto attached, marked Exhibit "H" and made a part hereof.

Complainants further say that by said order said Corporation Commission deprives the complainant, the Muskogee Gas and Elec-

tric Company, of any return whatever on a large part of its property, and that the rates for gas now put in force in the City of Muskogee by said order are so unreasonably low as to be non-compensatory, unremunerative and confiscatory, thereby depriving these complainants of property without due process of law and denying them the equal protection of the laws in contravention of the 14th Amendment to the Constitution of the United States.

Complainants further say that on the 18th day of February, 1922, it renewed its application to the Supreme Court of Oklahoma for an order superseding the rates put in force and effect by the order aforesaid, and that said application was by the Supreme Court denied; a copy of the order of said court denying said application being hereto attached, marked Exhibit "I" and made a part hereof.

Wherefore, complainants repeat the prayer of their original bill for a temporary and permanent injunction, and pray the court for a temporary order enjoining and restraining the defendants in this cause and each of them from in any wise enforcing the schedule of rates now in effect in Oklahoma City, Britton, Bethany, Yukon, Putnam City, Enid, El Reno and Muskogee, and from interfering with the complainants in their right to establish other higher and different rates in said cities and towns, and restraining and enjoin-

173 ing the defendants from taking any proceedings before any tribunal in the State of Oklahoma seeking in any wise to enforce said rates or to interfere with complainants in their right to install and collect from their consumers other and different rates, and complainants offer to submit to such conditions as the court may impose upon the granting of said temporary injunction.

JOHN H. ROEMER,  
DENNIS T. FLYNN,  
R. M. CAMPBELL,  
ROBT. M. RANEY,  
STREETER B. FLYNN,  
*Attorneys for Complainants.*

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

W. R. Emerson, being duly sworn, says that he is Secretary and Treasurer of the complainant, the Muskogee Gas and Electric Company; that I have read the foregoing Third Supplemental Bill of Complaint and that the matters and things therein stated are true; that the reason this complaint is not verified by the complainant is that the Muskogee Gas and Electric Company is a corporation and I am the Secretary and Treasurer of said corporation and am verifying this complaint for and in its behalf; that all matters therein stated are based on my personal knowledge of the affairs of said complainant and are true and correct.

W. R. EMERSON.

Subscribed and sworn to before me this 18th day of February, 1922.

[SEAL.]

J. M. TRAPP,  
*Notary Public.*

My Commission expires Nov. 8th, 1923.

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## EXHIBIT "H."

Before the Corporation Commission of Oklahoma.

Cause No. 4301. Order No. 2010.

In the Matter of Gas Rates to be Charged by THE MUSKOGEE GAS & ELECTRIC COMPANY at Muskogee, Oklahoma.

*Findings of Fact, Opinion, and Order.*

Application in this cause was filed June 30, 1921, at the same time that the application of the Oklahoma Gas & Electric Company in Cause No. 4302 was filed. Hearings in the two causes have been held simultaneously, and all matters made of record in Cause No. 4302 as referred to in the hearing of that case and as considered by the Commission in arriving at conclusions supporting Order No. 1995, in Cause 4302, are also a matter of record in this case in all respects in which they are applicable to the situation existing in Muskogee.

Conclusions in Order No. 1995 relating to intercorporate relationships, payments made to an engineering and management corporation, theories of valuation and deductions from or additions to original cost in arriving at a rate basis, are incorporated in and made a part of this order by reference thereto and without restatement.

The Commission did not have available with reference to Muskogee a check of the gas company's inventory or a re-appraisal of the property used and useful in furnishing gas to the people of Muskogee as it did in the case of Oklahoma City, but the results of the investigation thus made in the Oklahoma City case so closely approximated the development of a rate base from the historical cost of the property as reported to the Commission in accordance with its orders as to justify the use of the historical cost in the case of Muskogee in developing a rate base in this case. This cost, without overhead factors eliminated, and 20% added to the resulting figure for overheads and intangibles, and with \$83,462.00 included for additions and betterments from January 1st to November 30, 1921, develops a valuation of \$936,491.82, which, less earned depreciation, will be the rate base in this case. The figures representing additions and betterments for eleven months in 1921 is incorporated exactly as reported for the reason that the deduction of overheads and addition of 20% for overheads and intangibles would not materially change the result.

In this connection the Commission notes that the construction expenditures from June 30, 1914 to December 31, 1920, amounted to \$180,161.00, including \$35,673.00 for overhead expenses, and that of the last mentioned amount, \$33,525.00 or about 23% of the net construction costs, represents engineering and superintendence. The construction expenditures for eleven months in 1921, amounting to \$83,462.00, are thus found to be about four-sevenths of the total amount for such expenditures, representing a period of seven years preceding 1921.

An analysis of the results of operation for the past seven years shows that the Muskogee Gas & Electric Company has earned in addition to its operation expenses and 8% interest upon the investment, an additional sum of \$100,806.31 for depreciation. Inasmuch as this sum is not now available in a depreciation reserve fund it has been returned to the owners of the property or put back into the property in the shape of betterments. If it has been paid back to the owners it is not now in the property and is not entitled to consideration as a basis for earnings, and if it has been put back into the property it is already considered in the valuation as developed and is not entitled to a second consideration. This  
175 amount, therefore, will be deducted from the valuation as above developed and leaves \$835,685.51 as the rate base applicable in this case.

Reports of operation in Muskogee for the twelve months ending October 31, 1921, show that 1,179,468 M cu. ft. of gas were sold. Assuming that there will be 10% leakage in Muskogee during 1922 (and the testimony shows that leakage at time of hearing was only 14% in Muskogee and was rapidly declining) the company must purchase in 1922, 1,310,520 M cu. ft. of gas. Industrial sales in 1921 were 345,297 M cu. ft., which, assuming that the same industrial business will be done in 1922, and deducting the amount thereof from total gas to be purchased, shows gas to be purchased for domestic purposes in 1922, to be 965,223 M cu. ft., which at 25 cents per M cu. ft., the city gate rate established by this Commission, will cost \$241,306.00.

General expense at Muskogee for the twelve months ending October 31, 1921, is shown by the company's reports to have been \$53,232.00 (which will be discussed later) and distribution expenses for same period amount to \$29,007.00; thus the total expense of operation, including cost of domestic gas will be \$323,545.00; deducting from this amount \$11,952.00, representing 2½% of the gross revenues at Muskogee, for the twelve months considered, paid to an engineering and management corporation and disallowed by the Commission for same reasons fully set forth in Order No. 1995, leaves \$311,593.00 as the total operating expenses for 1922, based on the record of twelve months ending October 31, 1921, without taxes. Adding to this amount 13% of the rate basing valuation to cover interest at 8% and depreciation at 5%, develops \$420,232.00 as the necessary revenue for 1922, without taxes.

Total taxes paid by the Muskogee Gas & Electric Company in 1920 (paid in 1921) were reported as \$51,949.00. The company

reported to the Commission that taxes were apportioned in Muskogee, 41½% to the gas property and 58½% to the electric property, upon which basis the taxes paid on the gas property in 1921 amounted to \$21,558. Assuming that the same amount will be paid in 1922, which, however, the Commission considers excessive, the total revenue needed in 1922 is found to be \$441,790.00.

The company will sell in Muskogee in 1922, 834,171 M cu. ft. of gas for domestic purposes. At 50 cents per M cu. ft. this will yield \$417,085.00. Industrial sales, assuming that the volume will equal that of 1921, and indications are that it will be greater, will yield \$17,265.00, making total revenue for 1922, \$434,350.00. On the face of these figures estimated revenues in 1922 will be \$7,440.00 less than estimated expenses, including dividend and depreciation.

An investigation of the company's operating reports furnished the Commission during the past five years leads inevitably to the conclusion that excessive charges have been made in accounts 25 to 37, designated "general expense." As in the case of the Oklahoma City operation the Commission has never had a satisfactory analysis of the expenditures charged to this group of accounts, and a consideration of the figures purporting to reflect expenditures properly so chargeable, leads the Commission to the conviction that the charges reported are excessive and in a substantial proportion improper. For the fiscal year ending June 30, 1918, the Muskogee Gas & Electric Company reported general expense amounting to \$20,823.00. It reported at the same time, 5,921 consumers, which develops a general expense per consumer in Muskogee of \$3.51. In the twelve months ending October 31, 1921, the period covering operations considered in this order, the company shows charges against general expense accounts of \$53,232.00. It reports at the same time 6,598 consumers, which shows the general expense to have increased between 1918 and 1921 from \$3.51 per consumer to \$8.06 per consumer, or very much in excess of 100 per cent. The Commission is wholly without facts or figures explaining the necessity for any such increase in these charges, and considers the vast increase therein as not justified.

Considering the prospect that there will be a substantial increase in industrial sales in 1922, and in view of the conclusions already stated with reference to general expense charges, the Commission is of the opinion that the revenues estimated as to be earned in 1922 will more than make up the apparent deficiency of approximately \$7,500.00, shown in the figures above set forth, and therefore, the Commission is of the opinion that a domestic rate of 50 cents per M cu. ft. in Muskogee is ample to meet the requirements of the company at the present time.

Wherefore, The Commission being fully advised in the premises, and having given due consideration to all the facts, it is therefore ordered that rates for gas in the City of Muskogee, Oklahoma, shall be 50 cents per M cu. ft. for gas used for domestic purposes, and 25 cents per M cu. ft. for gas used for industrial purposes, provided that the first 500,000 cu. ft. of gas used for industrial purposes shall pay the domestic rate.

It is further ordered that a depreciation reserve account be established forthwith by the Muskogee Gas & Electric Company, and that all amounts herein allowed and earned for depreciation over and above 8% on the rate base be credited to said account, and that complete accounting for all charges against and balances in said reserve account be made to the Corporation Commission of Oklahoma henceforth in current reports of revenues and expenses.

It is further ordered that so long as a city gate rate of 35 cents per M cu. ft. is imposed upon the Muskogee Gas & Electric Company by authority of the United States District Court or other Federal Court, 13 cents per M may be collected from domestic patrons of said company in addition to the domestic rate herein prescribed, subject to refund as per previous order and bond.

This order shall be in full force and effect as of and from February 1, 1922, provided that consumers shall not be re-billed for gas already paid for.

Done at Oklahoma City, Oklahoma, on this 11th day of February, 1922.

CORPORATION COMMISSION OF  
OKLAHOMA.

CAMPBELL RUSSELL,

*Chairman.*

\_\_\_\_\_,  
*Commissioner.*

E. R. HUGHES,

*Commissioner.*

Attest:

G. F. SMITH,

*Secretary.*

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*Statement by Commissioner Hughes.*

This order is the result of a re-hearing in Cause No. 4301, pursuant to an order of the Supreme Court of December 17, 1921, remanding said matter then pending before that court upon appeal, back to this Commission for the taking of additional testimony, and the finding of additional facts based upon changed conditions since the original order was made and entered.

The time already has elapsed within which the report to the court was to have been made. The concurrence of at least two members of the Commission is required in the making of said report. While not agreeing to the basis upon which the rate is arrived at, I am signing same in order that the matter may be closed and the report made back to the Supreme Court as required by the terms of the order remanding same to this Commission.

E. R. HUGHES,

*Commissioner.*

178 In the Supreme Court of the State of Oklahoma.

MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Plaintiff  
in Error,

VS.

STATE OF OKLAHOMA and THE CORPORATION COMMISSION OF  
OKLAHOMA, Defendants in Error.

*Order.*

Now on this, the 18th day of February, 1922, comes on to be heard the application of the Muskogee Gas and Electric Company, a corporation, for a supersedeas and an order increasing the rate fixed by Order No. 1890 of the Corporation Commission made in Cause No. 4301, on June 29th, 1921, in which order the rate to be charged to consumers of gas in the City of Muskogee, as in said order provided; and,

Whereas, it appearing that this application for supersedeas was filed in this court on December 17, 1921, on which day this court, in consideration of same, and among other things, ordered that the cause be remanded to the Corporation Commission to be further investigated by the Commission and reported upon by the court; and,

Whereas, it now appears that in pursuance to said order the Corporation Commission has made its report to this court, fixing a rate of 50 cents per thousand cubic feet in the City of Muskogee, with the further proviso that so long as said gate rate of 35 cents per thousand cubic feet is in effect by virtue of order of Federal Court,

13 cents per thousand cubic feet may be collected, subject,  
179 however, to refund as per previous order and bond, making a total rate of 63 cents per thousand cubic feet in the City of Muskogee at this time; and,

Whereas, the application does not in any way or in any manner attack the finding and opinion of the Corporation Commission filed herein on the 17th day of February, 1922, and no evidence being offered to show that said findings and orders are unreasonable and unjust, such findings will be presumed to be correct, and nothing to the contrary being shown, it is therefore ordered, adjudged and decreed that said application for supersedeas, under the facts herein, and for the increased rate to be charged as in said application set forth, that said application be and the same is hereby denied.

(Signed)

JOHN H. PITCHFORD,  
*Vice Chief Justice.*

Endorsed: Filed in District Court on February 18, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

180 In the District Court of the United States for the Western  
District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY et al., Plaintiffs,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.,  
Defendants.

*Order and Citation.*

On this 18th day of February, 1922, comes the plaintiffs and present their motion to the court, praying for a temporary injunction in said cause as set forth in the third supplemental bill herein. And it is thereupon ordered that said motion be set down for hearing at Oklahoma City on the 27th day of February, 1922, at 10:00 o'clock A. M., at which time defendants and each of them are cited to appear and show cause why said temporary injunction should not be granted.

It is further ordered that service hereof shall be made by copy, together with a copy of said third supplemental bill, and that the said copy of this order and said amended bill be served upon the Governor of the State of Oklahoma and the Attorney General of said State five days before the date of said hearing.

Witness the Honorable John H. Cotteral, Judge of said court and the seal thereof, at Oklahoma City, in said District, this 18th day of February, 1922.

[Seal of the Court.]

ARNOLD C. DOLDE,

*Clerk,*

By M. V. HAWS,

*Deputy Clerk.*

Endorsed: Filed in District Court on February 18, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

181 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation and Muskogee Gas & Electric Company, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Answer.*

Come now the defendants above named, saving and excepting C. H. Ruth, and for their answer to the first amended bill of complaint and to the second supplemental bill of complaint and to the third supplemental bill of complaint in the above numbered and entitled cause, and in response to the citation for them to show cause why a temporary injunction should not be granted as prayed for in complainants' said pleadings, say:

These defendants challenge the right of the complainants to any relief whatsoever in this cause by reason of the insufficiency of the facts alleged in the complainants' said pleadings to constitute a valid cause of action in equity against these defendants or either of them, in that such pleadings on their face disclose that the complainants have an adequate remedy at law by way of appeal from the order of the Corporation Commission by it complained of to the Supreme Court of the State of Oklahoma and that complainants are pursuing such remedy at law, and in the premises the complainants are not entitled to any relief such as prayed until they shall have exhausted the said remedy at law which they are pursuing.

182 Moreover, the same pleadings of the complainants disclose the fact that the legislative processes in respect of the order of the Commission complained of are not complete, but are in process of operation, and in the premises it is not within the jurisdiction nor conformable to the comity observed in this court to issue any order which will suspend or prevent the completion of the legislative proceedings now being had and taken in respect of this subject matter, and these defendants ask that the point of law here raised which goes to the whole of the cause of action stated in complainants' pleadings may be disposed of before the consideration of the application of the complainants for a temporary injunction.

These defendants admit the several allegations in the bill of com-

plaint respecting: corporate and official characters of the complainants and of the respective defendants; the residences of the several parties as alleged; the authority of complainants under franchises to engage in the business of distributing natural gas in the several cities as alleged; the ownership by the respective complainants of the several city distributing systems as alleged.

They admit that the complainants are engaged in serving the public with natural gas through distributing systems owned in the several cities and towns, and that prior to the making by the Corporation Commission of Oklahoma of its order No. 1886 the gas by complainants distributed was obtained and distributed under an arrangement (which arrangement has however long ceased to be contractual) between the Oklahoma Natural Gas Company and the complainants whereunder two-thirds of all collections from the sale of natural gas to domestic consumers and three-fourths of the collections from the sale of natural gas to industrial and manufacturing consumers was paid to the Oklahoma Natural Gas Company which supplied the gas distributed by the complainants.

183 They say that this arrangement was a purely voluntary one on the part of complainants and that no authority of the State of Oklahoma was ever exerted to require either the entrance into the contract between the complainants and the Oklahoma Natural Gas Company or the continuance of the arrangement above referred to. They admit that the Corporation Commission by its said order No. 1886 directed the discontinuance of the arrangement whereunder an arbitrary percentage distribution of the collections from the sale of natural gas was made to the furnisher and distributors, respectively, by reason of the waste of gas consequent upon such a method of compensation and by reason of the further fact that such a method must practically result, either in the distributors receiving too great a return from the services by them performed in respect of handling such gas, or in the furnisher receiving an inadequate return from gas furnished, or in the public paying, in order to insure an adequate return to both the furnisher and the distributors, an exorbitant rate to the unequal benefit of one, either the furnisher or distributors. They admit that at the same time and by the same order the Corporation Commission fixed the city boundary or gate rate to be paid to the Oklahoma Natural Gas Company of 25¢ per thousand cubic feet, measured at the city gate, except as to the gas by the distributors sold to patrons and consumers using more than 500,000 cubic feet each, as to the portion of gas consumed by which consumers, the rate was fixed at 20¢ net per thousand cubic feet in excess of such 500,000 cubic feet per month.

They admit that complainants sought a writ of prohibition from the Supreme Court of Oklahoma to prevent the Corporation Commission from assuming jurisdiction to make the said order, the denial of such writ by the Supreme Court of the State of Oklahoma, and admit that complainants then applied to this court for injunction in this cause to prevent the Corporation Commission from enforcing such order and the denial of such application by this court, the taking of the matter to the United States Supreme Court and the

abandonment of the appellate proceedings and the dismissal of the appeal. They say that the reason for the dismissal was the  
184 recognition on the part of complainants that the contract which they alleged to exist, and that the arrangement which in fact existed, was subject to the modification and discontinuance by order of the Corporation Commission of Oklahoma and was not protected by the contract clause of the Federal Constitution, and that therefore there was no merit to their contentions respecting same. They admit also the taking of an appeal from said order of the Corporation Commission to the Supreme Court of Oklahoma and the dismissal of such appeal by the complainants, which they allege to have been for the same reason.

They admit that the rates for natural gas consumed in the cities and towns referred to from September 1, 1919 to April 30, 1920, and from May 1, 1920 to March 31, 1921 were as alleged, and that on April 1st, 1921 the rates reverted to those named in the first amended bill of complaint. They say that under the divisional arrangement then in force such rates were more than adequate to provide for a fair return upon the value of the several properties of the complainants to provide for depreciation and all replacement. They say, moreover, that such rates and such orders were never appealed from by the complainants and that complainants were satisfied therewith. They say, moreover, that no application has ever been made by either of the complainants for an adjustment of their gas rates in any of the cities by either of them served until after the making and promulgation of said order No. 1886, and that all orders theretofore made prescribing rates to be paid by consumers in the towns and cities served by the complainants were made upon the application of the Oklahoma Natural Gas Company which furnished the gas distributed by complainants in such cities and towns, and that the complainants sat by with the beneficiaries, to their great and excessive profit, to the extent of the arbitrary percentages effective under the divisional arrangement aforesaid, and never in any manner or respect complained of, either before the Corporation Commission or any competent authority whatsoever, of the adequacy of the return at any time received for service in distributing gas.

In the premises, these answering defendants deny that the  
185 complainants have not theretofore received an adequate return on their property used and useful in distributing natural gas and that the complainants are estopped by their conduct aforesaid from now complaining of any pre-existing inadequacy of return.

They admit that the complainants, after the taking effect of said order No. 1886 fixing the city gate rate, respectively applied to the Corporation Commission of Oklahoma for an increase in rates in all of the cities and towns served by them, and asked that rates be fixed as alleged, and as a rate base asked that a valuation be placed upon the respective gas utility properties of the complainants used and useful in distributing natural gas. Such applications were filed on or about June 29, 1921, which was the first time the complainants or either of them have ever made an application to the Corporation

Commission of Oklahoma for an adjustment of rates to be charged for gas by them or either of them distributed to the consuming public. They admit that the Corporation Commission upon such applications issued a temporary order fixing rates to be charged by the complainants effective as of July 1, 1921, the rates being the amounts alleged in the first amended petition of complainants.

A true statement of the history of the proceedings above referred to is made in Exhibits A, B, and C hereto attached, made a part hereof as fully as if written out at length herein, and marked exhibits respectively as above. The said Exhibits A, B, and C are orders from time to time made in the proceedings above referred to relating to the values of properties and the prices and rates to be charged for gas in the several towns in such orders referred to. In order to avoid repetition and length in this answer the facts in such orders respectively stated are by these answering defendants alleged to be true in all respects and particulars. Therein, and particularly in detail in Exhibit A, will be found stated in detail the history of the proceedings consequent upon the applications of the complainants for valuations and rate adjustments filed as aforesaid on or about June 29, 1921.

186 They deny that the rates in effect since July 1, 1921 until the taking effect of the orders copied as Exhibits A, B, and C, were or are inadequate or confiscatory. They deny that the matter has been repeatedly called to the attention of the Corporation Commission and the various members thereof, and allege that at the earliest convenience of the Corporation Commission and immediately upon the remanding of the cause by the Supreme Court of Oklahoma to the Corporation Commission and as rapidly as the cause could be heard the Corporation Commission had a hearing which was participated in by the complainants and by the several parties and representatives of the consuming public named and referred to in the orders copied as Exhibits A, B, and C, and at the earliest time at which the evidence adduced at the hearing could be considered the said orders, Exhibits A, B and C were made and entered and certified to the Supreme Court of Oklahoma for consideration by that court in the appeal which the complainants are continuing to prosecute from the action of the Corporation Commission had and taken as herein alleged and as in such orders stated.

They assert that at all times the Corporation Commission has proceeded with all reasonable dispatch in the matter of arriving at the fair and reasonable valuations upon which to base a fair and reasonable charge by the complainants herein, asserting moreover, that at great expense to the State the Commission's engineers and accountants were for long periods of time busily engaged in checking up the values of complainants' property used and useful in serving the towns and cities in the distribution of natural gas, and the Commission has fixed the values of the complainants' respective properties, has carefully investigated the experience of the past in and as regards the several distributing plants of the complainants, and has with all diligence and without unnecessary delay and upon a consideration of all of the evidence adduced before it by any party

participating in the proceedings before it, made its orders copies of which appear as Exhibits A, B and C as aforesaid, finding a valuation and fixing rates which the Commission and its skilled engineering and accounting employees and the Commission itself  
187 believe and allege will produce to the complainants assuredly adequate returns upon the fair values of their properties used and useful in serving the public, at the time of service, with, in addition, a fair margin of income to care for all contingencies.

As respects the allegations in the first amended bill of complaint of the complainants that in the year 1920 they and each of them filed with the Corporation Commission an application for a valuation of their distributing plants, these defendants state that the complainant companies are public utilities engaged in furnishing service of two kinds, namely, electric current and natural gas; that the application referred to was, at the time it was made, for the avowed purpose of fixing a value of the properties of the complainants both in their gas and electric utility departments and properties for the purpose of procuring a valuation to be made by the Corporation Commission upon which complainants could predicate certain financial arrangements then alleged to be in process of making; that the Corporation Commission of Oklahoma was and is without jurisdiction to find a valuation of public utility properties except for the purpose of rate making, and that in the application aforesaid for a valuation of the complainants' properties no adjustment of rates for gas furnished was requested and, in the premises, the Corporation Commission was without authority to fix a valuation in said proceeding for the gas utility property of the complainants. In the circumstances the Corporation Commission has never had before it in any proper proceeding over which it has jurisdiction any cause wherein it would be pertinent or proper for it to find and fix a valuation of the gas utility property of the complainants until the proceeding instituted as hereinbefore alleged by the complainants subsequent to the adoption of the city gate rates and until on or about June 29, 1921, since which time, as hereinbefore alleged, without unnecessary delay but with all diligence and dispatch the Commission has proceeded with its investigation of the value of the  
properties of the complainants and has found and fixed such  
188 values as disclosed by orders attached as Exhibits A, B, and C.

As respects the same matter, these defendants say that until the abandonment of the appeals of the complainants from the order fixing a city gate rate the complainants have always contended that the alleged divisional contracts, hereinbefore referred to, governed and controlled the compensation to be received by the complainants in their gas distributing business and that the Corporation Commission was without jurisdiction to abrogate such contracts which were alleged to be protected by the contract clause of the Federal Constitution. In the premises, it is plead that the complainants are estopped and should not be heard to complain that there has been no valuation of their gas utility properties or that there has been any delay in making such a valuation. These defendants deny that

the values of the gas distribution plants of the Oklahoma Gas & Electric in the Oklahoma City division, as defined in the first amended petition, was or is or ever has been the sum of \$3,191,-968.00, and deny that the value of its gas distribution plant in the city of Enid was, is, or ever has been, \$747,038.00; and deny that the value of its gas distributing plant in the city of El Reno was, is, or ever has been, the sum of \$415,966.00; and deny that the value of the gas distribution plant of the Muskogee Gas & Electric Company in the City of Muskogee, was, is, or ever has been, \$1,386,-087.00; and deny that the value of any of the properties referred to in the complainants' first amended bill of complaint was, is, or ever has been, as therein alleged whether exclusive or inclusive of working capital, going concern value, cost of money, or other intangibles, whether on reproduction cost theory with or without depreciation, or whether on five year average price cost for labor, material and property, or with or without depreciation on such theory and basis; and deny each allegation respecting the value of the respective properties as alleged to be after the addition of so-called intangibles, or that the amounts set up as for intangibles were or are or ever have been as alleged; they deny the allegations of said

189 first amended petition respecting the cost of gas for the period stated, respecting operating expenses for the period stated, and respecting the total receipts and net earnings for the period stated as such allegations appertain to each of the several systems of the complainants, respectively; they deny the allegations of said first amended bill of complaint respecting additions to plants and the value of additions to plants in the several respective systems of the complainants where the amounts of such allegations are other than or inconsistent with figures as to valuations of plants recited in exhibits A, B, and C hereto attached.

These defendants, as respects the argumentative matter set forth in the first amended bill of complaint resulting from the attempted comparison between what is alleged to have been the cost of gas from October 1, 1909 to September 30, 1920, in the respective cities and towns served by the complainants, allege that such basis of comparison is fallacious and shows no fact worthy of consideration in connection with the complaints made by the complainants in that the matters and things alleged in this connection occurred during the period in which the division's contracts aforesaid were in operation and effect, and in the premises afford no accurate basis upon which a comparison of any profits may be made; that the so-called city gate rate principle has been in effect only since July 1, 1921, and that insufficient time has elapsed to disclose the experiential results of the application of the gate rate to the gross and net income of the distributing systems of the complainants during an adequate period; that the only experience from which data is now available is an experience during a period from July 1st to November 30th, 1921, during which time warmer weather conditions have prevailed, and the demand for gas by domestic consumers has been very light, and that the only experience which would demonstrate

the adequacy or inadequacy of the rates allowed based upon any given city gate rate, would be at the minimum, a period of one year, taking into consideration the income from gas sold under the various weather conditions which would prevail throughout an entire yearly period.

190 As respects the allegations in the first amended bill of complaint of complainants as to values of its several utility properties in the several cities and towns referred to, the defendants state that except as to these particular allegations pertaining to the five year average valuation, the figures alleged are figures based upon reproduction cost as of March 31st, 1920, to which are added additions at alleged actual cost from March 31, 1921, to September 30, 1921; that the price of labor and material upon which the said valuation was predicated, were at the time as of which same were applied to the inventories, at the very peak of prices for both labor and material; that in the hearing to which reference has heretofore been made, and concluded before the Corporation Commission, as to the valuation of the gas utility properties of the complainants on December 31, 1921, it was shown to be a fact that there had been very material reductions in the cost of both material and labor which would go into the reproduction of the gas utility properties aforesaid, and that the cost to reproduce as of December 31, 1921, would be not less than 40% of the cost as of the dates aforesaid, and that as to all of such allegations the figures are based upon the complainants' inventory filed in the valuation case to which reference is hereinbefore made over which the Corporation Commission did not have jurisdiction, and that such figures include numerous and large items of properties which are obsolete and not used or useful in connection with the gas distributing systems of the complainants, and that due to decreasing prices of labor and material, even the figures of the complainant upon the peak price cost of labor and material, is altogether unreasonable and would furnish no proper basis for a valuation at any such figures or amounts as are set forth in the said pleading, and in point of fact, the further evidence offered in the hearing concluded December 31, 1921, as respects reproduction costs on the petitioner's theory the complainants' figures showed great divergence of a valuation ascertained on the reproduction cost theory from those shown in complainants' figures and exhibits submitted in said hearing, and that the Corporation Commission is not bound by any one theory of valuation but will take into consideration all elements which are proper for consideration in ascertaining the value of property used and useful in the business of a public utility company. In the premises, the allegations in the said pleading as to value are unreliable and furnish no proper predicate upon which the alleged confiscatory character of the rates complained of may be estimated.

191 Without repetition, the facts, as respects the subject matter of the above paragraph of the answer, are alleged to be as stated in Exhibits A, B, and C hereto attached.

Further, answering the allegations of the pleadings of the complainants here being answered based upon a comparison between

alleged costs of gas calculated on the basis of the divisional contracts or practice, now discontinued, and the gate rate method of compensation, these defendants say: That the loss for unaccounted for gas through leakage in the distribution of natural gas in the cities and towns served by the complainants is excessive and unreasonable; that prior to the order of the Corporation Commission known as Order No. 1886, establishing a gate rate, the loss from leakage in such cities and towns fell entirely upon the furnishers of such gas. Oklahoma Natural Gas Company, and complainants suffered no loss whatever by reason thereof; that the facts as respects leakage in the several cities and towns are precisely the facts stated in the Commission's orders copied and attached hereto as Exhibits A, B, and C. The complainants have, in the premises, not been diligent in keeping their property in the proper state of repair to prevent leakage and have by their inefficiency, mismanagement and improper conduct of distributing natural gas allowed the leakage to remain and be grossly excessive and much higher than a reasonable amount of leakage should be in an efficiently managed and properly conducted gas distributing plant, the extent of such excess leakage being the percentage disclosed in Exhibits A, B, and C, respectively, where such exhibits treat of the subject of leakage, and that in justice to the consumers of gas and to the duty of the complainants as holding themselves out as public utilities engaged in distributing gas to the public, consideration should be given, in determining the reasonableness of rates to be charged by complainants, to the matter of leakage, and that it would be just to diminish the rates fixed by such an amount as would take off of the consuming public the burden of supplying in the form of rates an income to the complainants to enable the complainants to compensate the furnishing company, Oklahoma Natural Gas Company, for gas which the complainants lose in their distributing systems as a result of carelessness, neglect and inefficient management in failing to keep such plants free from inexcusable leakage.

As to the matter of excess of actual over permissible and properly excusable leakage in all of the properties of complainants, defendants say that the defects and inefficiencies in the physical properties of complainants as the result of which such excess occurs greatly diminish the value of such properties under what their values would be except therefor, and that if the actual extent of such excess leakage were known the value of such properties, as properly thus diminished, would reduce the values far below those on which the rates were based as shown by the said Exhibit "A," and in any event the values of such properties do not exceed those assumed in such order as the rate base for such properties respectively.

As respects the allegation as to the possible effect upon the complainants and their income, if the Oklahoma Natural Gas Company shall be successful in its application for temporary injunction and relief in a rate case now pending in this court, these defendants say: that immediately and as soon after notice, as the same could be considered, upon the issuing of the temporary restraining order in the case of the Oklahoma Natural Gas Company, a corporation, vs.

Campbell Russell, et al., being Cause No. 501 in Equity of the United States District Court for the Western District of Oklahoma, temporarily restraining the Corporation Commission from interfering with the 35¢ city gate rate proposed to be charged by the complainant in said cause, the Corporation Commission, in order to afford the complainants who, as hereinbefore appears acquired the gas used above to supply the several communities by them respectively served, made a temporary order affording relief to the complainants in permitting them to charge and collect for gas 193 which, as the result of said temporary restraining order they would be compelled to pay 35¢ per M cu. ft. instead of 25¢ per M cu. ft., and additional 13¢ per M cu. ft. to the patrons by them respectively supplied, conditioning such order upon the giving of a bond to make a refund to patrons for the additional 13¢ per M cu. ft. in event it should finally be determined that the complainants were not required to pay the rate permitted as a result of the issuance of such temporary restraining order or any part of the increase represented thereby, and that complainants have availed themselves of the advantages of such temporary relief by giving the bond required as a condition to the becoming effective of the 13¢ increase aforesaid—a copy of such order showing the date and terms thereof is hereto attached and marked for identification "Exhibit D" and made a part hereof as fully as if written at length herein, said Order being No. 1979 in Cause No. 4301. Moreover, such 13¢ increase is continued in the subsequent orders of the Commission herein referred to as Exhibits A, B, and C.

Respecting the allegation in the first amended bill of complaint, comparing their situation before and after the adoption of the city gate rate and the discontinuance of the so-called divisional arrangement, argumentative deductions therefrom that the complainants sustained a loss as to the sale and distribution of gas for industrial purposes and are deprived of the revenue which they enjoyed under the alleged divisional arrangement, these defendants say that the complainants have no vested right in the so-called divisional arrangements; that in abandoning their contention that they had unimpaired contract rights protected by the federal constitutional contract clause they estopped themselves to complain of any dispossession of any privileges enjoyed under such arrangement; that the complainants are not entitled at law to a profit for the operation of each and every of its separate classes and kinds of services in any event; that the rates allowed by the orders copied as Exhibits A, B, and C, will produce adequate returns for all proper purposes on all of the gas business of the complainants, and that by 194 reason of the inefficiency, default negligence and failure of complainants to keep their plants and systems in an adequate state of repair and free from excessive and unnecessary leakage the complainants are not entitled to complain of not being allowed such rates as will reimburse them for their own neglect, default and inefficiency; that notwithstanding the allegations herein made the rates allowed by the orders copied as Exhibits A, B, and C, will yield the complainants an adequate return independent of the inexcusable

and excessive leakage which they permit in their respective gas distributing plants.

Referring to the hypothetical deductions in the first amended bill of complaint as to what would have happened during certain periods therein specified had the Commission's gate rate, order No. 1886, been in effect during such period and in the respective cities and towns named upon the rates named, said allegations are denied even under the state of facts assumed and are specifically alleged to be impertinent in view of the making of the orders copied as Exhibits A, B, and C, as are also denied the deductions and the figures deduced from the hypothetical assumption as to the operation under rates for the twelve months succeeding September 30, 1921. Defendants state with respect to this immediate matter that the calculations and figures made and alleged are based upon figures which include improper elements of expense of operation, as more particularly outlined in the attached and copied exhibits heretofore referred to, and that when proper expense elements for operations are included the calculations as to net income as made in said Exhibits A, B, and C, are considered, and improper expense items are disallowed and excluded as in such order appears, amply adequate income is provided by the rates prescribed in such orders for all proper and legitimate purposes.

As to the allegations of the first amended bill of complaint respecting the penalties prescribed by Section 1192, Revised Laws of Oklahoma, 1910, and the effect thereof, these defendants say that such allegations are impertinent in that the complainants are not required under the laws of Oklahoma to subject themselves to such penalties in order to test the sufficiency of the rates allowed by the orders of the Commission but have an adequate remedy by appeal  
195 in accordance with the provisions of the laws of the State of Oklahoma, and that such appeals are by express constitutional provisions given precedence upon the dockets of the Supreme Court to which the appeal is had. The complainants are availing themselves of this remedy.

The defendant, Corporation Commission, avers respecting the several elements and items concerning which the complainants introduced no satisfying testimony as described and outlined in Exhibits A, B, and C, that it is willing at any time to consider any application made by the complainants respecting such matters and make any modification of such order which the testimony may warrant, and it says that as respects subject matter, the subject investigated and the evidence adduced respecting such subject, the complainants are not entitled in this proceeding to broaden the scope of the inquiry or to adduce testimony which was not submitted to the Corporation Commission. Moreover, the defendant Corporation Commission avers that as is necessary and proper to calculate and prescribe a rate, the experience of the past has, in making the orders copied as Exhibits A, B, and C, been considered as probable of repetition during the ensuing period of time, and that since the making of the orders here being attacked not sufficient time has elapsed with which to test and

compare the expected with the actual results, but it avers its readiness to consider, and calls attention to the fact that the laws of the State of Oklahoma afford the complainants the right to have it consider, any application which may be made by the complainants based upon any variance between the anticipated and the actual result of the operation of its orders aforesaid or due to altered or unexpected facts and circumstances.

Specifically, respecting the allegations of the second supplemental bill of complaint, the defendants admit that the complainants made their application for supersedeas to the Supreme Court of Oklahoma as therein alleged, do not deny that the exhibits referring to the same are as attached, but do not admit the statements and allegations made in such exhibits, admitting the same to be copies only for the  
196 purpose of conceding that the *that the* matter was presented to the Supreme Court as alleged, they admit the action of the Supreme Court upon such supersedeas as alleged, the extensions granted from time to time as alleged, the filing of the findings of fact of the Commission as alleged and the fixing of the rates as stated; they deny that the orders of the Commission deprive the complainant Oklahoma Gas & Electric Company of any return upon a large part of its property or that the rates now in force in the respective cities and towns are not compensatory, unremunerative or confiscatory; deny that they deprive the complainants of property without due process of law, admit the allegations as to renewed application for supersedeas and the order denying the same, and deny that the complainants are entitled to the relief therein prayed.

Specifically as respects the third supplemental bill of complaint, the defendants admit the making of the order of February 17, 1922, the renewal of the application for supersedeas by the complainant and the denial of the same as alleged, but deny that the order in the third supplemental bill of complaint referred to deprives the complainant Muskogee Gas & Electric Company of any return whatever on a large portion of its property or that the rates prescribed by such order are uncompensatory, unremunerative and confiscatory, and deny that such rates deprive the complainant of property without due process of law or deny the complainant the equal protection of the law. They allege the facts to be precisely as stated in the order of the Corporation Commission referred to and by reference adopte the statements made in such order as their allegations of fact herein.

Defendants deny each and every allegation in the complainants' bill of complaint to the effect that the rates fixed by said orders are inadequate and unremunerative or confiscatory as to any or all of complainants' properties or that the said rates will operate or do operate to deprive complainants of their property or any part thereof or an adequate return on their property or any part thereof without due process of law in violation of the Fourteenth Amendment to the  
Constitution of the United States.

197 Defendants specifically deny the allegations set forth in complainants' bill in which it is averred that the complainants have no adequate remedy at law, and assert the fact to be that under the terms and provisions of the Constitution of the State of Oklahoma

and the laws enacted pursuant thereto, a plain, adequate and complete remedy is allowed on an appeal from the orders of the Corporation Commission to the Supreme Court of the State of Oklahoma, and that for this reason the Federal court should not entertain jurisdiction for the purpose of granting a temporary injunction. The remedy at law which is available to complainants herein is first by motion filed with the Corporation Commission of the State of Oklahoma to modify and set aside its Order No. 1886; second, by an appeal to the Supreme Court of the State of Oklahoma which it is alleged in complainants' bill is being taken advantage of, and by reason of which, under and by virtue of Section 267 of the Judicial Code of the United States, this action cannot be sustained.

Defendants further say that this court is without jurisdiction to grant the relief prayed for herein for the following reasons; that said Order No. 1886 and the proceedings prior to its rendition were judicial in their nature and involved a judicial inquiry into the facts, and judicial construction of the laws of the State of Oklahoma and the application of said laws as construed to the facts found; that entertaining said proceedings in hearing and determining same and in making said order, the Corporation Commission of Oklahoma, Campbell Russell, Art L. Walker and E. R. Hughes acted judicially as a court and that under and by virtue of Section 265 of the Judicial Code of the United States this court is without jurisdiction to say said proceedings and that the remedy of the plaintiffs herein is by appeal to the Supreme Court of Oklahoma as provided by the laws of the state.

Defendants further say that if said proceedings and promulgation of said Order No. 1886 are legislative in character, said order has heretofore been made, the legislative power already exercised 198 and said order of record; that any further duty or power which this Commission or its membership may be called upon to exercise in connection with said order, must and will be judicial in their nature and under Section 19 of Article 9 of the Constitution of Oklahoma, the same would be a judicial proceeding and that this Court is without jurisdiction to enjoin the Corporation Commission of Oklahoma from acting as a court or from hearing any judicial proceedings which may be brought before it looking to the enforcement of said Order No. 1886.

Defendants further aver that if said proceeding and the promulgation of said order is legislative in character, that this court is without jurisdiction for the reason that the Constitution of the State of Oklahoma and the laws passed pursuant thereto, specifically confer the right of appeal from said Commission to the Supreme Court of this state, and this action should not be commenced until the said order has been affirmed by the Supreme Court of Oklahoma, that body having authority and possessing the power to say the last word in such legislative proceedings, and that therefore this suit is prematurely brought and should be dismissed.

Defendants aver that under Chapter 93, Session Laws 1913 of the State of Oklahoma, the Corporation Commission of the State of Oklahoma is given general supervision over all public utilities, with power

to fix and establish rates and to prescribe rules, requirements and regulations affecting their services, operation, and the management and conduct of their business, and to inquire into the management of the business thereof and the method in which same is conducted, and that said act of the legislature granted full visitorial and inquisitorial powers to examine such public utilities and keep informed as to the general conditions, their capitalization, rates, plants, equipments, apparatus and other property owned, leased, controlled or operated, value of same, the management, conduct, operation, practices and services not only with respect to the adequacy, security and accommodation afforded by their service, but with respect to their compliance with the provisions of this act, with the Constitution and laws of the State of Oklahoma, and with the orders of the Commission; and that if it should be contended that said Corporation

199 Commission erred in determining the facts, nevertheless the laws of the State of Oklahoma grant an appeal to the Supreme Court of Oklahoma where said facts may be reviewed and any error of the Commission in the determination thereof or in the application of the law thereto, may be corrected, but that this court is not vested by law with any appellate jurisdiction over this Commission and has no power to review its action in cases such as this, and that the jurisdiction of the Supreme Court of Oklahoma to review the action of the Commission on appeal cannot be divested by an action of this court based upon the alleged erroneous findings of fact or an erroneous application of the state laws to the facts found or the alleged unconstitutionality of such orders so made by said Commission.

Wherefore, defendants and each of them ask that the pleadings here answered be dismissed; that the injunctive relief prayed for by complainants be denied; that the court in any event refuse to restrain the ordinary process of administration of the provisions of the laws and Constitution of the State of Oklahoma respecting the rates of public utilities such as complainants until such processes shall have been completed, and that complainants be required as a condition to the further proceeding herein to first resort to and exhaust their legal remedies under the Constitution and laws of Oklahoma respecting the subject matter of their complaint, and the defendants pray that they may be dismissed hence with their costs.

For these answering defendants:

E. S. RATCLIFF,  
ASP, SNYDER, OWEN &  
LYBRAND,  
HENRY G. SNYDER,  
W. P. MCGUINN,  
M. B. COPAN,  
F. W. HERNDON,  
*Their Attorneys.*

200 STATE OF OKLAHOMA,  
Oklahoma County, ss:

Campbell Russell of lawful age, having been first duly sworn, states on his oath that he is the Chairman of the Corporation Commission of the State of Oklahoma, one of the defendants in this cause; that he has read the within and foregoing answer upon behalf of said defendants; that he is familiar with the matters and things therein alleged, and that same are true and correct.

CAMPBELL RUSSELL.

Subscribed and sworn to before me this 24 day of February, 1922.

[SEAL.]

J. S. CRAM,  
Notary Public.

My Commission expires 1-1-1923.

201 In the District Court of the United States for the Western  
District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants.

I, G. F. Smith, Secretary of the Corporation Commission of the State of Oklahoma, do hereby certify that the within and foregoing is a true and correct copy of Orders No. 1995 and 2010, in Causes Nos. 4301 and 4302, made and promulgated by the Corporation Commission on the 18th day of January, 1922, and the 11th day of February, 1922, respectively.

[Seal of Corporation Commission of Oklahoma.]

G. F. SMITH,  
Secretary of the Corporation Commission  
of the State of Oklahoma.

Before the Corporation Commission of the State of Oklahoma.

Cause No. 4302. Order No. 1995.

In the Matter of Gas Rates at OKLAHOMA CITY, EL RENO, ENID,  
YUKON, and BRITTON, OKLAHOMA.

*Findings of Fact, Opinion, and Order.*

This case was filed June 22, 1921. The petitioner, the Oklahoma Gas & Electric Company, is, and was at that time, engaged in the business of receiving natural gas from the Oklahoma Natural Gas Company at the town border of Oklahoma City and the other towns mentioned in the title of the case, and selling the same to the public in the various towns for domestic and industrial uses.

The gas was distributed to consumers at rates prescribed by this Commission. Settlement was made between the supplying and distributing gas companies on shares in the proceeds of collections for gas sold, the share of each being governed by contract.

When this case was filed the Oklahoma Gas & Electric Company anticipated that the contract referred to was about to be set aside by this Commission and that a settlement by the distributing company for all gas received at the city border would be required.

The petitioner requested in its petition in this case that at the time of change from the proportional contract relation between the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company to a gate rate basis, to govern payment for gas received, a proper rate for gas sold to consumers be fixed by the Corporation Commission.

This cause has never been formally consolidated with any other proceeding but is so closely involved with two other cases as to suggest that a statement of the issue in this case refer to said other proceedings.

The gate rate referred to in the petition herein was established by Corporation Commission Order No. 1886, dated June 28, 1921, in Cause 4023. This was a proceeding filed August 10, 1920, wherein the Oklahoma Natural Gas Company petitioned the Commission to find a valuation of its property and establish a gate rate or city border rate for gas furnished by said company for distribution to consumers in the several cities supplied directly or indirectly by said company.

The Oklahoma Gas & Electric Company, petitioner in this case, and the Muskogee Gas & Electric Company, petitioner in Cause 4301, which is identical with the present case except that it involves rates at Muskogee, Oklahoma, filed demurrers to the hearing of the application of the Oklahoma Natural Gas Company in Cause 4023, asking for a city border rate, but the same were over-ruled.

Prior to the filing of petition in the present case, to-wit: on November 26, 1920, the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company filed a petition in Cause 4142 requesting the Commission to find a valuation of properties of said companies. Hearings under said application were held at various dates in 1920 and 1921, and exhibits and testimony were introduced offering the Commission a basis for arriving at such a valuation. At the present time no order has been entered in said Cause 4142.

On July 1, 1921, the Commission issued its Order 1889 in the present case, establishing certain rates to be charged consumers in the cities involved in this case, said order being designated as a temporary order and being issued in response to the request of the petitioner herein for a rate to consumers applicable as of the date when the change from the old contract to the city border rate basis should become effective as between the Oklahoma Gas & Electric Company and the Oklahoma Natural Gas Company. Said gate rate order and Order 1889 became effective July 1, 1921.

Said Order 1889 was appealed by the Oklahoma Gas & Electric Company to the Supreme Court of Oklahoma, where it was contended that this Commission had no authority to make a temporary order of the character imputed by the Commission to Order 1889 without first finding a valuation of the property which had been and was being sought in Cause 4142. This contention was not sustained by the Supreme Court and Order 1889 was affirmed. Later, to-wit, on December 17, 1921, the petitioner in this case applied to the Supreme Court of Oklahoma for a writ of superseas by which it sought to suspend the operation of Order 1889 and secure from said court authority to collect very much higher rates than were prescribed in said order. The Supreme Court forthwith on the same date remanded said Order 1889 to the Corporation Commission with instructions to make further investigation and further report to said Court on the issues therein involved, such further report to be filed with the Supreme Court by the Corporation Commission within fifteen days, or on or before January 3, 1922. The petitioner herein thereafter, and before said January 3, 1922, filed proceedings in equity in the District Court of the United States in the Western District of Oklahoma, by which proceedings it sought to enjoin the Corporation Commission and the State of Oklahoma from enforcing the provisions of Order 1889.

The Corporation Commission took further evidence in this Cause on December 30th and 31st, 1921, but on account of the impossibility of having such evidence transcribed before January 3, 1922, and on account of being compelled to make preparation to answer the proceedings in equity in the United States court already referred to, this Commission was unable to make further report to the Supreme Court in this case on or before January 3, 1922, and, upon showing, was given additional time of fifteen days, or until January 18, 1922.

## Valuation Theories.

While the petition in this case was filed June 22, 1921, the investigation by the Commission into the valuation of the property involved in this case as a basis for a return has covered a period of practically fifteen months.

As already stated, in November, 1920, the company applied to the Commission for approval of a valuation of its property of all classes in all the cities involved in this proceeding. Its engineer stated that his preparation of the exhibits offered had taken one year and had involved the use of the time of about ten men. Valuations were submitted covering all gas and electric properties in the entire state owned by the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company. (Record, Cause 4142, Dec. 9, 1920, p. 25.) It was urged at that time that the Commission give its approval, with the least possible delay, to the valuation submitted, it being represented that the same was to

204 be used for the purpose of re-financing outstanding obligations of the company rather than as a basis for establishing rates. However, the original application stated specifically that revision of certain rates was desired, and the Commission has never considered the rate issue, other than as involved in that case. In fact the Commission has never assumed that it would have authority to give its approval or make a finding as to the valuation of a public utility except as a basis for rate adjustment.

The Commission employed an engineer and provided him with help for the purpose of making a verification of the quantities represented by the company's valuation as existing in its gas property in Oklahoma City, and an appraisal of the present value thereof. This work was begun June 1, 1921, and the engineer's report to the Commission was made November 1, 1921. This report represented the work of from five to ten men during this five months' period. (Record, Cause 4302, Dec. 30, 1921, p. 21.)

The company's engineer reported quantities as of April 1, 1920 (Record, Cause 4142, Dec. 9, 1920, p. 10). His figures are submitted in Uhlendorf Company's Exhibit No. 3 in Cause 4142, pages 3 and 4. The letter of transmittal, beginning at page 3 of said exhibit, states that valuations are submitted on the basis of reproduction cost now and present value, and, in addition, reproduction cost and reproduction cost less depreciation, based on five year average prices for the period ended March 31, 1920. The figures representing such valuations for the Oklahoma City division of the company's gas property are as follows: Reproduction cost now \$3,152,905; present value, \$2,296,901; reproduction cost less depreciation, based on five year average prices, \$1,853,286.00. These figures are exclusive of working capital, and going concern value.

The Commission's engineer reported that quantities shown in the inventory submitted by the company were found by him to be substantially correct. (Record, Cause 4302, p. 23.) The Commission's

engineer submitted an exhibit on the replacement new theory (Musson's Exhibit No. 2, Cause 4302) and on the original cost theory, (Musson's Exhibit No. 1). In making the appraisal on the replacement theory, quantities shown by the company's exhibits as of April 30, 1920, were used. To this were added additions and betterments to the property down to July 31, 1921, evidences thereof being taken from the company's office work register. (Record, Cause 4302, p. 22.) Prices used were as of August 1, 1921, same being secured from supply houses or manufacturers, as to materials, and the labor costs being included, according to the engineer's testimony, at wages prevailing in Oklahoma City as of that date. (Record, Cause 4302, p. 25.)

The Commission's engineer developed an original cost appraisal by examining vouchers and bills. The replacement cost found by this engineer, based on August first, 1921, prices, was \$2,693,492. He estimated that the plant had been in use an average of eight years and found its present value on this theory to be \$2,092,876. His valuation of the property on the original cost theory was given as \$1,846,845, as of August 1, 1921.

During the period when the company's valuation figures were prepared the highest prices known in the history of the utility industry, as well as in all other industries, prevailed. Utilities urged upon courts and commissions generally, and upon this Commission, the adoption of the reproduction cost new theory as a basis for rate structures. The Minnesota rate case decided by the U. S. Supreme Court in 1913 was pointed to as endorsing that theory. In that case, however, the court said that each case must rest upon  
205 its special facts, that the ascertainment of fair value is not controlled by artificial rules, that it is not a matter of formula but that there must be a reasonable judgment having its basis in a proper consideration of all relevant facts. In the case of Des Moines Gas Company vs. City of Des Moines, 238 U. S. 153, the Supreme Court held that each case must be controlled by its own circumstances, and that while in the Minnesota case reproduction cost was declared to be an appropriate method, there was no indication that it was the exclusive method of ascertaining values for rate making. This Commission known of no case in which the Supreme Court has considered specifically a valuation based upon reproduction cost during an abnormal period such as that upon which the company's reproduction valuation in this case is based, and the court clearly has not foreclosed itself by the Minnesota case, or any other, from taking into consideration any condition or circumstance which would have the effect of making the reproduction or any other theory unreasonable or unjust.

In the case of Brooklyn-Borough Gas Company vs. Public Service Commission, (P. U. R. 1918-F, 335-337) former Justice Charles E. Hughes, who wrote the opinion in the Minnesota rate case, sat as referee. In the Brooklyn case he was confronted squarely with the question as to the constitutional right of a public utility to have its reproduction cost in abnormal times adopted as a rate base, and in his opinion he said:

"When the value of a plant has been properly determined by the regulating authority, and suitable allowance is made for the investment in subsequent additions, it is manifestly proper to calculate the fair return upon this basis, at least for a reasonable period. In the present case, the interval has been one of unusual circumstances incident to war, and of especially high costs, and there is no reason why there should be substituted for the official appraisal a hypothetical estimate of reproduction cost under abnormal conditions reaching an amount vastly in excess of the actual investment."

The Supreme Court of the United States in the cases above referred to, and numerous other cases, clearly has left the way open for this Commission to avail itself of all possible evidences as to the reasonable present value of the property of this company used and useful in the business of furnishing gas to its patrons; and in exercising full discretion and latitude to this end this Commission clearly has the approval of the author of the celebrated Minnesota decision.

#### Replacement Cost.

Mr. Musson, the Commission's engineer in this case, submits as the replacement cost of the property, using quantities as of April 1, 1920, the prices as of August 1, 1921, the figures of \$2,693,492 (Musson's Exhibit No. 2). This amount includes, according to the practice of the company in reporting expansion of its plant from time to time, and consistent with the witness's testimony (Record p. 39) costs other than for physical plant slightly in excess of 20 per cent, these costs covering items such as engineering during construction, superintendence, legal expenses, injuries during construction, etc. Deducting 20 per cent for such items, or \$34,350, the replacement value of the physical plant is found to be \$2,258,642. A further deduction of \$46,802 for omissions and contingencies improperly included in plant account makes the figures \$2,201,842. The Witness states that additions and betterments were placed upon the property between April 1, 1920, and August 1, 1921, amounting to \$111,597, deducting 20 per cent, as in the case of the entire plant, for costs other than physical, the actual cost of the plant added during  
206 the period referred to becomes \$87,319, and it may be assumed that this actual cost would not be materially different from the replacement cost of the same items of property as of August 1, 1921. This leaves \$2,299,161 as the replacement value of the physical plant. Net construction costs August 1, 1921, to October 31, 1921, reported by the company add \$30,850 and this figure becomes \$2,319,911.00.

This plant includes (Record p. 30) property not used and useful in serving the public aggregating in replacement value the sum of \$46,570 (Record p. 30) which is to be deducted, and leaves \$2,273,341 as the replacement value of the plant used and useful.

Testimony shows (Exhibit- 2-B and 2-C, Record p. 51) that the plant includes various items of property paid for by consumers who

have not been reimbursed by the company. The Commission holds the company not entitled to a return upon property in which it has no investment. Exhibits 2-B and 2-C show money collected from consumers for extensions between July 1, 1914 and February 1, 1921, amounting to \$10,887.43 and money advanced by consumers between June 30, 1917, and November 30, 1921, not subject to return to the consumer, amounting to \$5,877.25, or a total of \$16,764.68. The same exhibits show \$13,916.89 collected from consumers for extensions subject to refund according to the terms of contracts entered into between the company and each consumer, most of which contracts provide for the return to the consumer of 20 per cent of his gross bill for gas annually for four years, any balance unrefunded at the expiration of such time to be cancelled, and the extension to become the property of the company. The return of 20 per cent of the gross bill for four years would be equal to the return of 80 per cent of the gross bill for one year. The Commission considers reasonable the conclusion that not in excess of two-thirds of the amount of these conditional payments by consumers will be refunded within a four years' period, which leaves one-third of the investment represented by such amount absorbed by the company without cost, which proportion of \$13,916.89 or \$4,639.29 is to be added to the amount added to plant during the time specified which does not represent investment by the company, and makes the full amount \$21,404.97. Should the company at any time show that the Commission's conclusion as to the result of the refund contracts is unfair to the company any injustice, occasioned thereby, will be corrected. Notwithstanding the fact that Exhibits 2-B and 2-C were introduced in response to the request of the Commission for complete information as to what part of the plant had been provided by patrons, and that the practice of financing extensions in this manner is proven, the company did not offer any figures touching this subject as of a period prior to June 30, 1914. However, the figures furnished are found to be 3.5 per cent of the additions and betterments to the plant since June 30, 1914, and to indicate conclusively the trend or proportion of such investment in the property as a whole. Application of such percentage to the investment already developed shows the full amount of plant so financed to have cost \$79,566. It is clear that the company is not justified in capitalizing investment of this character, and it is fair to deduct the amount thereof. By this process we find the present reproduction value of the property used and useful, paid for by the company, to be \$2,193,775 as of November 1, 1921.

But it is the replacement value as of the present date, the date of hearing, with which the Commission is concerned, and testimony shows that there was a marked decline in several major factors of the plant valuation between August 1 and December 31, 1921.

Services, main and distributing lines, meters and regulators, were the subject of testimony in this connection, as also was the element of labor entering into these items of plant. Mr. Musson testified (Record p. 27) that there had been a reduction of 10 per cent in pipe such as was used in this plant since August first. He said that

meters were down ten per cent, admitting, however, that while he had quotations supporting this statement as to three kinds of meters he did not have any quotations as to the H. & M. meter, of which this company had in service about 11,000 out of 16,000 meters. He said regulators were down ten per cent. He stated that his quotations on pipe prices were furnished by supply houses. Another witness, A. F. Binns, a contracting plumber in Oklahoma City, testified that the price of pipe (Record Page 110) had declined more than was stated by Mr. Musson, and submitted figures as to prevailing prices at which he could buy pipe in Oklahoma City (Binns' Exhibits 1 and 2).

It should be observed that discrepancies between price quotations secured by engineers and those secured by contractors probably are due to the fact that one is a potential customer of a supply house and secures quotations constituting a bid for business, while the other is well known to the dealer making the quotation, not as a potential customer, but as one whose use of the figures given is a matter of importance to other potential customers, the public utilities, who are interested in having the engineer receive and use high rather than low price quotations.

The witness A. F. Binns is in the business of buying and laying gas pipe on both large and small projects, and is an extensive and constant employer of the class of labor used in such work. He testified that he had information as to the costs of pipe and labor as of the present day. The figures submitted in Mr. Musson's testimony (Record Page 27) and Mr. Binns' Exhibits 1 and 2 were as follows:

Size pipe.	Musson (page 27), cents per ft.	Binns' Exhibit 1, retail, cents per ft.	Binns' Exhibit 2, 1 carload, cents per ft.
2 in.....	20.	17.09	13.31
3 ".....	41.3	35.34	27.50
4 ".....	62.7	53.63	42.26
6 ".....	111.	94.46	74.43
8 ".....	152.	135.50	103.70
10 ".....	195.	176.60	135.91
12 ".....	273.	248.40	191.11

Mr. Binns testified that the figures applied to screw-end pipe and that he could buy plain-end pipe such as is most commonly used in gas construction work, not only generally but in Oklahoma City, at 10 per cent lower cost, and that he could get a further concession of 10 per cent by buying pipe in lots of fifteen cars or more.

This point was made clear in the record as follows:

(Record, page 114:)

"Mr. Snyder: Suppose you were buying that in as many as fifteen or one hundred carloads at a time. What would you get it for?

A. Possibly 10% discount.

Q. I am afraid I don't know how to ask you this question, but is there some difference between these prices and those heavy couplings?

A. Sure there is a difference of 10%. The pipe is prepared for welding and screw pipe is different. If it is for welding the prices are 10% lower. But this is for screw pipe.

208 Q. So that the prices for the kind they generally use here is 10% off of this?

A. Yes sir.

Q. Then if you buy in large numbers of carload, you would get a 10% discount off of that?

A. Yes sir.

Q. That is all?

A. If you want to buy that amount of stuff, however, you would go to the mills for it.

Q. This is a quotation to you today from whom?

A. Crane & Company.

Q. They maintain a local distributing house and are large dealers in this kind of stuff?

A. Yes sir.

Q. That is all.

Cross-examination.

By Mr. Reiss:

Q. Did Mr. Georgia, the Manager of Crane & Company, tell you that he would give you 10% discount from this if in fifteen carload lots?

A. Yes sir.

Q. Mr. Georgia told you that himself?

A. Yes sir.

Q. And also 10% off on the pipe for welding?

A. Yes sir.

Q. That's all."

Figures compiled from Mr. Musson's exhibits show that the reproduction of the property involved in this case would require probably four hundred cars of pipe. Reproduction cost of the pipe should be the cost on the most favorable basis at which pipe in large quantities could be procured. An analysis of these figures, therefore, shows that the price of pipe today has declined fully 33½ per cent from the prices used by Mr. Musson, and this percentage of decline will be adopted in arriving at the present value of the property. Mr. Musson's statement that meters have declined 10 per cent will be accepted and the reduction applied to one-third of the meters of the company, the testimony showing that the reduction was not applicable as to about two-thirds of the company's meters. Mr. Musson's statement that regulators were down 10 per cent was not questioned.

Testimony was conclusive also as to the decline in the cost of labor between the war-time labor situation and the present day.

Mr. Musson stated that he used the scale prevailing in 1920, although the highest in seven years, because he was informed that the company was actually paying that scale. Question as to the cost of the labor factor in the value of this plant was introduced by the company's attorney in connection with Mr. Musson's testimony on the price of pipe. Questioned by the company's attorneys as to whether the labor factor in pipe line valuation had declined since August first, Mr. Musson disclaimed information on the point, the record, page 43, reading:

"Mr. Reiss: When you state that there is a reduction from the August first price of 18 per cent in the price of pipe, that doesn't mean a reduction of the entire account because labor is a large item in that account?

209 A. Yes sir.

Q. So the 18 per cent does not apply to the account as a whole, but only to the pipe?

A. That's all—just the pipe."

The next morning the State Labor Commissioner testified as to present labor costs. He stated that common labor was being supplied by employment bureaus under his jurisdiction at from 25 to 50 cents per hour, the average being 35 and 40 cents. He stated that track labor was being supplied to railroads and the Oklahoma City street railway at 25 cents per hour. When the Labor Commissioner began his testimony the attorney for the Gas Company stated in the record (page 101) that his company was now paying 40 cents per hour as against 50 cents which was paid at the time the valuation was made. The same attorney who had shown that a decline of 18 per cent in pipe did not apply to labor now stated that the company's reduction in labor costs amounted in fact to 20 per cent.

Minta De Ford, Office Manager for A. F. Binns, already referred to, testified that she employed labor for Mr. Binns' business and that there was an abundant supply of labor available at from 30 to 50 cents per hour (Record p. 109). Mr. Binns (page 110) stated that reasonably efficient common labor could be obtained in Oklahoma City at the present time at from 30 to 45 cents per hour, according to class of labor desired, and that ditch diggers or "pick and shovel" men, as he termed the character of labor necessary to lay gas pipes, were plentiful at from 30 to 35 cents per hour. He said he was turning away such labor daily.

From this testimony the Commission concludes that there has been a decline of at least 33½ per cent in the cost of labor since war costs prevailed, which Mr. Musson used, and while the Commission does not find that 30 to 35 cents an hour is a living wage at the present time, it is compelled to apply, in arriving at the replacement cost of this property, the wage scale prevailing generally and available for work of the character involved herein.

With adjustment for cast iron pipe and fittings, which the Commission is advised are not affected by the price decline, and applying the reduced material and labor costs thus developed, the item

of service is reduced \$47,920, mains and distributing lines, \$316,221, meters and regulators, \$8,968, and the reproduction value of the property used and useful, paid for by the company as of December 31, 1921, is found to be \$1,820,666. Adding to this amount 20 per cent to cover intangible factors of value which the Commission has heretofore found to be a reasonable allowance for such factors, the complete replacement cost of the gas property in this case is found to be \$2,184,799. The addition last mentioned is intended to cover all reasonable claims for working capital, going concern value and all the usual intangibles contended for in a replacement valuation and those specifically enumerated by the witness, Mr. Musson, as engineering, superintendence, injuries during construction, legal expenses, interest during construction, etc. Depreciating this figure in the same percentage used by Mr. Musson in arriving at his replacement value as of the present time, the figure representing this value becomes \$1,704,143.

#### Original Cost.

The Commission has given full consideration to all pertinent facts, figures and theories offered in connection with the valuation of the property involved in this case. It has considered that a very substantial part of this plant has been constructed at costs higher than today's replacement costs, and it has not considered it just or reasonable to deny the utility the right to a return upon such items of property at the value of the investment they actually represent. It has weighed in the balance of reason and fair judgment the relation of a public utility business to business of other character, and has given study to the fact that while public utilities are restricted by law as to their earnings and may not at will ride upon  
210 a tide of upward selling prices such as this country witnessed and experienced during and following the war, they may, in a year like that just ended, or, probably, like that just begun, demand their reasonable return upon the present value of their property used and useful in serving the public, while thousands of business concerns of other character are crashing, tottering on the brink of bankruptcy or "getting by" with little or no earning at present and a discouraging prospect ahead.

In the light of these conditions, and others that might be set forth, the Commission has concluded that a fair and liberal rate basing value of the property involved in this case in the original cost as shown by the Commission's engineer (Musson's exhibit No. 1) without depreciation but with certain modifications and amplifications which, for reasons which will be fully set forth, the Commission finds proper.

The original cost found by Mr. Musson as of August 1, 1921, was \$1,846,845. (Record, Cause 4302, p. 38.) This includes certain items of property acquired or constructed from time to time which are not now used or useful in supplying gas to the patrons of the company. These items include furnaces, boilers and accessories, steam engines, water gas sets and accessories, purification apparatus

and accessory equipment and works, aggregating in present value the sum of \$27,149. (Record, Cause 4302, p. 30.) Under no theory of valuation should property not used and useful be included in the valuation for rate making, and this item will be deducted, leaving the cost of the property used and useful, according to Mr. Musson, \$1,819,696.

Certain items proper to be included, but uncertain as to amount, have been included, these items including engineering superintendence, injuries during construction, legal expenses, interest during construction, etc., which the engineer testified (Record, Cause 4302, p. 39) amounted to slightly in excess of 20 per cent of the value of the property. In order to arrive at the cost of the physical plant, stripped of items of the character enumerated, the Commission will deduct 20 per cent, or \$293,606, which leaves the figure of \$1,526,090 as representing the "bare bones" of the property August 1, 1921. This figure, however, includes \$37,499 for omissions and contingencies, which must be deducted and leaves \$1,489,641.

This figure, however, it will be remembered, includes the items of plant paid for by patrons of the company, reference to which has been made in connection with the replacement value of the property. Deducting three and one-half per cent on account of investment of this character on which the company is not entitled to a return regardless of the theory of valuation adopted, we have left, as the "bare bones" of the plant, used and useful, paid for by the company, at original cost, the sum of \$1,437,504, as of August 1, 1921. To this is to be added net construction costs from August 1, 1921 to October 31, 1921, amounting to \$30,850, making \$1,431,504. Allowing 20 per cent for intangible factors of value, as was done in developing the final figure of replacement cost, there is to be added \$293,671, which gives us as the final original cost of the property August 1, 1921, the sum of \$1,762,025, and this figure will be and is adopted as the rate basis in this case, subject to readjustment on account of earnings heretofore appropriated but which should have been carried in a depreciation reserve fund the amount of which is hereafter shown.

The Company claims as an operating expense two and one-half per cent on gross earnings paid each year to an engineering and management corporation. This item the Commission, in arriving at the rate fixed, has disallowed, for the reason that the evidence in this case fails to show any services of value to the local company rendered by such management company. This subject is discussed in the record, Cause 4304, at page 66.

Just what this 2.5 per cent payment has meant to the patrons of the Oklahoma Gas & Electric Company is indicated by a review of what it has meant to the recipient of this payment during seven years, as shown by the reports to the Corporation Commission. The gross and net revenues reported for the Oklahoma City Division for the fiscal years ended June 30th from 1915 to 1921, inclusive, are as follows:

				Gross.	Net.
Year ended June 30, 1915.....				\$735,979.39	\$151,006.72
" " " " 1916.....				757,662.32	152,369.78
" " " " 1917.....				860,925.93	181,055.58
" " " " 1918.....				1,024,841.47	183,843.96
" " " " 1919.....				1,679,326.29	327,783.18
" " " " 1920.....				1,457,749.04	244,084.95
" " " " 1921.....				1,670,302.78	268,214.93

It was disclosed at this hearing that the payment of 2.5 per cent was made during all of that period. The amount was charged to operating expenses and does not appear in the net revenues shown above.

The amount of these payments by years was: Year ended June 30, 1915, \$18,399.48; 1916, \$18,940.56; 1917, \$21,523.15; 1918, \$25,621.04; 1919, \$41,983.16; 1920, \$36,443.72; 1921, \$41,757.56; total, \$204,668.67. These amounts deducted from the operating expenses and added to the net earnings would increase the net revenues to the following amounts: Year ended June 30, 1915, \$169,406.20; 1916, \$171,310.34; 1917, \$202,578.73; 1918, \$209,465.00; 1919, \$369,766.34; 1920, \$280,528.67; 1921, \$309,972.49; total, \$1,713,027.77.

The effect of the foregoing would be as follows:

The average annual gross revenues for the seven years ended June 30, 1915 to 1921, inclusive, was \$1,169,535.32. The average net revenue as reported by the company was \$215,479.87. The average two and one-half per cent payments per annum was \$29,233.33. Adding this to the net income reported by the company gives \$244,713.20 per annum. The average investment during the seven years enumerated was \$1,375,330.61. The annual average return for dividends, interest, depreciation and other purposes was 17.8 per cent. During the whole of that period the Commission recognized 8 per cent per annum as a reasonable return for dividends, interest, etc., and 5 per cent per annum as a fair basis upon which to accrue a fund for depreciation, obsolescence, etc., making a total recognized to be fair and equitable of 13 per cent per annum. This would yield a return during the seven years stated of \$1,251,550.46. Deducting that amount from the actual returns as reported by the company leaves a surplus of \$256,808.64. Adding to that the two and one-half per cent of gross revenues would bring the surplus to \$461,477.31. The depreciation actually collected by the company for the purpose of maintaining the integrity of its original investment amounted to \$481,365.72 during the seven year period. This will be deducted to develop the final rate base, and the same becomes \$1,280,660.

The values used in the foregoing computations showing the effect of the 2.5 per cent payment during the seven years were arrived at by taking the original reports of the company as of June 30, 1914,

and adding thereto their completion reports from year to year. From the investment thus reported all overheads such as engineering, superintendence, interest during construction, etc., were eliminated and in lieu thereof 20 per cent was added to the actual physical value of the property and the cost of its installation. These values have no relation to the value arrived at as a rate base in this case.

The foregoing figures give assurance that operation of the property involved in this case, has, during the years past, been amply profitable to completely amortise all items of plant which have been excluded from consideration as a part of the earning property because not now used and useful in furnishing gas to the public. The same figures show that ample funds for the maintenance of this property in good condition have been available heretofore, and that leakage of two million cubic feet per year per mile of three inch main equivalent (or 20 per cent) as shown by the testimony should not exist and should not hereafter be permitted; and hereafter leakage in excess of one million cubic feet per mile of three inch main or its equivalent (10 per cent) will be held by the Commission to be excessive.

212 With an operating ratio of about 80, which this company has enjoyed heretofore, a payment of 2.5 per cent gross earning is 12.5% of the net, and can be defended only by a clear and definite showing of value given which is not available in the record in this case.

The payments made to the engineering and management company by the Oklahoma Gas & Electric Company in years past, disclosed in this case, have, as the Commission's investigation of the records demonstrates, made the return on the actual cost of the property from year to year, with due allowance for intangible values, more than a reasonable one. The Commission cannot permit this practice to go longer unrestrained, and will not permit this charge to be made hereafter at least until such time as it can be shown to be reasonable and just.

Summarizing as to values; as heretofore shown, from the present value of the property used and useful, has been deducted that part of the property which has been paid for by patrons and in which the company has no investment, and depreciation that has been allowed and earned but appropriated to their own use and benefit by the owner of the property, either by the payment of excess dividends, or (more likely) by paying for additions and betterments to the property. If, as has been assumed likely, this money has been put into additions and betterments, then it has been again included in the rate base on which to draw further dividends. If it has been returned to the owners as excess dividends then it no longer is invested in the property, and in neither event would the public be entitled to continue to pay dividends thereon. All calculations appearing hereinafter involving a rate base are based upon this value of \$1,206,625, the Commission recognizing this amount as that which the Company still has in the property and which has not been returned to it.

## Cost of Financing.

During the year 1921 a program of refinancing the Oklahoma Gas & Electric Company was accomplished, according to the testimony of the manager of the rate department of the engineering and management corporation, as a result of which interest charges become a burden upon the operation of this company, to which attention must be directed. The problem before the Commission is best stated by the witness himself at page 91 of the record. In response to a request by the company's attorney that the witness develop the cost of money to the company at the present time the witness said: (Record p. 91, 92 and 93.)

A. "Early in 1921, the Oklahoma Gas & Electric Company found it necessary to refinance in a large measure for itself and the Muskogee Gas & Electric Company, and it put out its refunding mortgage fund of the par value of \$6,000,000, and it also put out its ten year notes amounting to two and a half million dollars, making a total of eight and a half million dollars. The discounts and expenses incident to this financing amounts to one million three hundred and three thousand one hundred and forty-two dollars and seventy-one cents (\$1,303,142.71). The net amount realized from the issues of securities was \$7,196,867.19. The bonds were 7.5% bonds and the notes bear 8%. The annual interest on the bonds at 7.5% amounts to \$450,000.00. The annual interest on the notes amounts to \$200,000.00 so that the total annual interest charges on these securities amounts to \$650,000.00. The amount of discount and expenses spread over a period of twenty years amounts to \$65,157.14 per year, making the total of annual interest on this financing covering both the annual interest charges and the annual portion of discounts and expenses, \$715,157.14. The total annual interest charges amounting to \$650,000.00 is equivalent to 9.3% upon the amount realized from these issues. The total annual interest charges with the annual portion of the discount and expenses of financing amounts to 9.94% of the amount realized from these issues.

In reply to Chairman Russell's question as to what the purchases of the securities were, the witness answered:

A. As far as the question of the Chairman is concerned, I am unable to tell the course through which these securities pass. All I know is that the records show that that is the amount realized, as I have stated. The amount taken by the different financial houses who entered into those transactions of financing these properties or furnishing the money upon those securities, I am unable to say about.

213 Chairman Russell: The Commission thinks the records should show these things, and that this was a necessary transaction, and that these securities passed into the hands of adverse holders and not to the holding companies. We realize financing is being done on a great deal better terms today than at that

time, and if that is not true there should be some testimony to remove that idea.

A. Of course this particular financing had to be done at that time, and I believe that that was generally understood that the financing could not at that time be deferred. No one knew then that it would be better now.

Mr. Snyder: Conditions are better now than then aren't they?

A. Generally they are.

Q. Who underwrote those issues if you know?

A. I know there were a number of financial houses that entered into the syndicate to take these securities, but how much of them each took I am unable to say."

Questioned as to whether this refinancing program had not been put through at the most disadvantageous time that has existed in years the witness stated that it was at least within a short time of the worst period. Later in the hearing (Record Page 158) this matter was again referred to by counsel as follows:

Mr. Snyder: You will perhaps agree that the mortgage or Deed — Trust under which your recent financing was done, has a provision——

Mr. Reiss: That instrument speaks for itself, and I think it should be made a part of the records.

Mr. Snyder: I didn't know that it was a part of the records.

Mr. Reiss: It *has* or we will make it so.

Mr. Snyder: I want to know whether your bonds have a provision whereby they can be retired.

Mr. Reiss: That Deed of Trust has this provision under certain conditions.

Mr. Snyder: So in the event money rates decrease you can save the Gas Company the interest you are paying on those bonds?

Mr. Reiss: The agreement speaks for itself, and it is in the record."

The letter and the agreement referred to are not in the record. The attorney for the company referred to them frequently as in the record but the documents were not offered in evidence. A  
214 suggestion that they be offered was made but counsel for the Oklahoma City Chamber of Commerce objected as there was no opportunity to cross examine the writer of the letter. (Record Page 98).

In the face of the foregoing testimony relating to the refinancing program the Commission cannot approve, as a proper burden upon the public that this company serves, the tremendous interest charges claimed. Without definite information on this point the Commission is unable to determine what interest charges, if any, do in fact constitute a proper charge against operation of the Oklahoma company, and cannot approve such charges as a proper operating expense.

Further, the Commission takes judicial knowledge of the fact that any necessary program of refinancing can be put through at the

present time on terms much more favorable than were accepted in the program above referred to, that even were the profits on the securities marketed in 1921 going wholly to adverse holders the Commission would not be justified in permitting such program to stand at the present time, in view of the admission of the company's attorney that the securities issued are subject to recall and reissue whenever more favorable terms are to be had.

#### Taxes.

There is charged against the property of the Oklahoma City division of this company, according to the monthly reports for the twelve months ending October 31, 1921, a total amount for taxes in the sum of \$64,219.00. In connection with this case and in connection with Cause No. 4142, the valuation case, the Commission has endeavored to secure information as to the character of these taxes,—to determine whether or not the amount includes federal income taxes, and, if so, how much, the Commission being of the opinion that federal income taxes are not a proper charge against operation, but that a corporation, like an individual, is obligated to pay the income tax out of net income. No information upon which a conclusion on this point could be based has been furnished and the Commission can not, from information available in this record, determine what allowance should be made for taxes properly chargeable to operation of the property. Should the full amount claimed be allowed, the necessary earning to compensate therefor would be 5.5 per cent. While the Commission does not approve the amount in full, it is of the opinion, and finds, that the rates prescribed herein will prove ample to take care of the necessary proper allowance for taxes.

#### Leakage.

As heretofore stated, the Oklahoma Gas & Electric Company, prior to the promulgation of Order No. 1886 by this Commission was buying gas from the Oklahoma Natural Gas Company under what was known as a proportional contract. The Oklahoma Natural Gas Company delivered the gas to the Oklahoma Gas & Electric Company at the town border of Oklahoma City and accepted in payment therefor two-thirds of the gross collections of the Oklahoma Gas & Electric Company for gas sold for domestic uses and three-fourths of the gross collections for gas used for industrial purposes. Under this arrangement the burden of gas unaccounted for, usually referred to as leakage, fell upon the Oklahoma Natural Gas Company, notwithstanding the fact that it had no responsibility for or control over the lines conveying the gas from the city border to the consumer.

Under the city gate rate plan established by Order No. 1886 the gas is measured at the city gate and paid for by the Oklahoma Gas & Electric Company at a specific rate per M cu. ft. This throws the entire burden of the cost of unaccounted for gas upon the Oklahoma

Gas & Electric Company, and this factor has a substantial bearing upon the result of operation of the business of this company. The superintendent of the gas department of this company testified (Record Page 85) that the unaccounted for gas in the Oklahoma City division for the year ending August 31, 1921; was 20.5 per cent of the gas received at the city gate. He stated that the same figures for the year ending September 30th would be 21.8 per cent; for the year ending October 31st, 21.3 per cent, and for the year ending November 30th, 21.8 per cent. It is fairly well established, if these figures are dependable, that the loss of gas in Oklahoma City at the present time is not less than 20 per cent of the gas received at the city gate.

The Kansas Public Utilities Commission was stated in testimony in this case to have found that a reasonable standard of leakage would be 200,000 cu. ft. per year per mile of 3 inch main or its equivalent. (Record Page 147).

The Commission's gas engineer, while not a witness in this case, has testified in other cases that in his opinion a sufficiently low standard of leakage would be 500,000 cu. ft. per year per mile of 3 inch main, or its equivalent, and it was agreed by counsel for the company (Record Page 126) that the record should show that were this witness available he would so testify, the company not agreeing, however, to the correctness of his judgment in the matter. The leakage testified to by the company's gas superintendent is 2,000,000 cu. ft. per mile of 3 inch main or ten times as great as that said to have been approved by the Kansas Commission and four times as great as that approved by this Commission's engineer. (Record Page 151).

Without a survey of the situation in Oklahoma City to determine the condition of the plant and cost of repairs to reduce leakage it is impracticable to establish an arbitrary maximum limit to govern the allowance for gas unaccounted for. The rate to be fixed by the Commission in the present case, will, however, compensate the company for loss of gas shown as being lost at this time, and is prescribed with the definite provision and requirement that revenues in excess of a return of 8 per cent on the property be carried in a depreciation reserve account, which shall be fully accounted for at all times and against which shall be charged such items of expense involved in the correction of the leakage situation as may not be properly and consistently charged to current maintenance.

Testimony shows (Record Page 156) that while the Company has on its books what it terms a depreciation reserve account, it maintains no depreciation reserve in fact and the account has not been carried regularly, repair or maintenance bills not being charged to this amount but to current expenses. The Commission will require henceforth that a depreciation reserve account be carried and maintained, all replacements being charged against such account and all charges against and balances in said account being reported to

the Commission regularly in current reports of revenues and expenses.

### Computation.

For the purpose of determining the results of operation of the Oklahoma Gas & Electric Company in Oklahoma City, Yukon, and Britton, known as the Oklahoma City division, and which have been included in the engineers' valuations of the Oklahoma City division property, investigation has been made into the reports of revenues and expenses furnished by the company for the twelve months ending October 31, 1921. The reports used were the monthly report for October, 1921, carrying figures for that month and for the corresponding month in 1920 and for the accumulative period, January to October inclusive, in 1921 and 1920, and the monthly reports for December and November 1920.

In making computations involving the total amount of gas sold the quantity of gas has been determined by applying the rate at which the same was sold to the amount of money received for the prevailing rate. From November 1, 1920, to March 31, 1921, the rate for domestic gas was 48 cents, for so-called special gas 40 cents and for industrial gas 35 cents. During April, May and June, 1921, the domestic rate was 40 cents, the special rate 32 cents and the industrial rate 25 cents. During July, August, September and October, 1921, the domestic rate was 42 cents and the industrial rate 25 cents. There was no special rate in effect during these months.

It would seem reasonable that in estimating gas to be sold in 1922 increased sales due to increase in number of consumers be taken into consideration, this factor being  $5\frac{1}{2}$  per cent and being developed by determining the average increase in consumers during the twelve months' period November 1920 to October 1921 inclusive. The number of consumers at the expiration of the twelve months' period exceeded the number a year previous thereto by more than 10 per cent, but the average number only during the entire twelve months was used. It can be assumed that at least this number will be served throughout 1922. No consideration should be given the fact that the number will increase during this year, such increase being allowed to compensate the company for increase in the value of its property during the same period. Consumers November 1, 1920, numbered 17,235. The number October 31, 1921, was 18,933. The number developed by averaging the number of the twelve months respectively was 17,966. However, notwithstanding the increase in number of consumers during 1921, there was a slight decrease in domestic gas sales compared with 1920. While the Commission fully believes this decrease to be due to the mild winter of 1920-1921 compared with 1919-1920 this highly probable source of additional business and increased revenues will be disregarded in computing the probable results of operation in 1922, as the increased consumption which might be assumed is likely to be affected by the increased rate.

Conclusions as to the result of operation in 1922 at the rate to be prescribed herein have been developed on the basis of leakage

amounting to 10 percent of the gas received, or one million cubic feet per mile of 3 inch main, assuming that industrial business in 1922 will be the same as during the twelve months' period 217 investigated. Estimates also have been made using 20 per cent leakage and 10 per cent leakage, assuming that there will be no industrial business whatever. Domestic gas purchases in 1921 amounted to 2,328,244 M cubic feet. Domestic gas purchases for 1922, allowing for the fact that with leakage of ten per cent the sales are but nine-tenths of the purchases, will be 2,586,937 M cubic feet and will cost, at 25 cents per M the sum of \$646,734. The part of this gas that is sold, which will be 2,328,244 M cubic feet, will bring, at 45 cents per M \$1,047,709.80.

Manufacturing gas, according to the same processes of computation, will cost, at 20 cents per M \$145,853.00 and will bring 25 cents, \$164,084.00.

Special gas, so-called, which sells at the domestic rate, being industrial gas used up to a certain quantity, will cost \$86,260.00 and will bring \$139,742.00.

Thus the cost of all gas for 1922, assuming 10 per cent leakage, will be \$878,847, and the gross revenue will be \$1,351,536.

Operating expenses are reported to the Commission under three groups of accounts, designated "plant expenses," distribution and maintenance expenses," and "general expenses," respectively. Plant expenses, as applied to the property involved in this case, consist of the cost of gas only. The other designations are self-explanatory.

Operating expenses aside from the cost of gas will be, assuming (which should not be true) that operating costs will be as high as in the twelve months ending October 31, 1921, \$170,595.86. From this amount, however, is to be deducted \$33,375.73, being two and one-half per cent of gross earnings during the twelve months' period, paid to the Engineering and Management Company and not allowed as an operating expense by the Commission, which leaves \$137,220 as the operating expense aside from cost of gas and makes the total operating expense, including cost of gas, \$1,016,067. Total revenues as already developed will be \$1,351,536, which leaves \$335,469 as the net operating revenue, which amount will be 26.2 per cent on the rate basing valuation of \$1,206,625. This amount will pay in full the taxes as charged, at 5.3 per cent of the valuation, whether or not it is in full a legitimate charge, and leave 20.9 per cent return for interest and depreciation.

By identical processes of computation it will be found that if, as some of the gas company representatives profess to fear, industrial business amounts to little or nothing in 1922, net operating revenue for the year for domestic business alone will be found to be \$263,755, and the return for interest and depreciation after paying in full taxes as charged this year 15.2 per cent.

Similarly, if it be assumed that leakage is to be in 1922 as it is testified to have been during the past year, 20 per cent, and that there will be no industrial business, identical processes of computation will show the net operating revenue on domestic business alone to be \$182,913, and the return available for interest, depreciation and

taxes, 15.1 per cent, or, after paying the taxes in full as above, 8.9 per cent.

But there is today, and will doubtless continue to be, industrial business in a substantial amount, and the Commission believes the rates herein prescribed will be ample to provide, not only for dividends but 5 per cent depreciation reserve upon the full value of the property after the payment of 8 per cent upon the fair value of the property, less the amount shown to have been already appropriated and used by the owners. The above rates for dividends and depreciation are hereby approved and allowed.

218 As already stated, the record shows that the property involved in this case has been and is being maintained in condition to give service, all replacements and charges properly chargeable against depreciation reserve having been taken care of out of current revenues. The Company has been at liberty at all times to have carried a depreciation reserve in fact and to have made a complete and clear showing in support of the necessity therefor. But it has elected instead to handle the matter as has been stated. In view of this fact a consistent or valid claim can scarcely be made that an allowance for depreciation for the twelve months ending October, 1921, should be made. However, the testimony shows industrial business to be improving and the rate employed in the foregoing computations is more than sufficient to care for legitimate charges to operation, and, the Commission expects, will yield even under the most unfavorable conditions suggested; a modicum of return to be carried into the depreciation reserve account during the coming year, which, if efficiently handled, should show substantial progress toward an operating result less shrouded in uncertainty.

#### Order.

Wherefore, the Commission being fully informed in the premises and having given due consideration to all the facts in the record,

It is ordered that rates for gas in the City of Oklahoma City, Yukon, Britton, Bethany and Putnam City, shall be 45 cents per thousand cubic feet for gas used for domestic purposes and 25 cents per thousand cubic feet for gas used for industrial purposes; provided that the first 500,000 cubic feet of gas for industrial purposes shall pay the domestic rate.

It is further ordered that a depreciation reserve account be established forthwith by the Oklahoma Gas and Electric Company and that all amounts herein allowed and earned for depreciation over and above 8 per cent on the rate base be credited to said account, and that complete accounting for all charges against and balances in said reserve account be made to the Corporation Commission of Oklahoma henceforth in current reports of revenues and expenses.

It is further ordered that so long as a city gate rate of 35 cents per thousand cubic feet is imposed upon the Oklahoma Gas & Electric Company by authority of the United States District Court or other Federal Court, thirteen cents per thousand cubic feet may

be collected from domestic patrons of said company in addition to the domestic rate herein prescribed subject to refund as per previous order and bond.

Supplemental orders are in preparation prescribing rates for Enid, El Reno and Muskogee, and will be announced as soon as completed.

This order shall be in full force and effect as of and from January 1, 1922.

Done at Oklahoma City, Oklahoma, this the 18th day of January, 1922.

CORPORATION COMMISSION OF  
OKLAHOMA.

CAMPBELL RUSSELL,  
*Chairman.*

ART. L. WALKER,  
*Commissioner.*

Attest:

G. F. SMITH,  
*Secretary.*

219

EXHIBIT B.

Before the Corporation Commission of the State of Oklahoma.

Cause No. 4301. Order No. 2010.

In the Matter of Gas Rates to be Charged by THE MUSKOGEE GAS  
& ELECTRIC COMPANY at Muskogee, Oklahoma.

*Findings of Fact, Opinion, & Order.*

Application in this case was filed June 30, 1921, at the same time that the application of the Oklahoma Gas & Electric Company in Cause No. 4302 was filed. Hearings in the two causes have been held simultaneously, and all matters made of record in Cause No. 4302 as referred to in the hearing of that case and as considered by the Commission in arriving at conclusions supporting Order No. 1995, in Cause No. 4302, are also a matter of record in this case in all respects in which they are applicable to the situation existing in Muskogee.

Conclusions in Order No. 1995 relating to intercorporate relationships, payments made to an engineering and management corporation, theories of valuation and deductions from or additions to original cost in arriving at a rate basis, are incorporated in and made a part of this order by reference thereto and without restatement.

The Commission did not have available with reference to Muskogee a check of the gas company's inventory or a re-appraisal of the property used and useful in furnishing gas to the people of Muskogee as it did in the case of Oklahoma City but the results of the investigation thus made in the Oklahoma City case so closely approximated the development of a rate base from the historical cost of the

property as reported to the Commission in accordance with its orders as to justify the use of the historical cost in the case of Muskogee with

in developing a rate base in this case. This cost without overhead factors eliminated, and 20% added to the resulting figure for overheads and intangibles, and with \$83,462.00 included for additions and betterments from January 1st to November 30, 1921, develops a valuation of \$936,491.82, which, less earned depreciation, will be the rate base in this case. The figures representing additions and betterments for eleven months in 1921 is incorporated exactly as reported for the reason that the deduction of overheads and addition of 20% for overheads and intangibles would not materially change the result.

In this connection the Commission notes that the construction expenditures from June 30, 1914 to December 31, 1920, amounted to \$180,161.00, including \$35,673.00 for overhead expenses, and that of the last mentioned amount, \$33,525.00, or about 23% of the net construction costs represents engineering and superintendence. The construction expenditures for eleven months in 1921, amounting to \$83,462.00 are thus found to be about four-sevenths of the total amount for such expenditures, representing a period of seven years preceding 1921.

An analysis of the results of operation for the past seven years shows that the Muskogee Gas & Electric Company has earned in addition to its operation expenses and 8% interest upon the investment an additional sum of \$100,806.31 for depreciation. Inasmuch as this sum is not now available in a depreciation reserve fund it has been returned to the owners of the property or put back into the property in the shape of betterments. If it has been paid back to the owners it is not now in the property and is not entitled to consideration as a basis for earnings, and if it has been put  
220 back into the property it is already considered in the valuation as developed and is not entitled to a second consideration. This amount therefore, will be deducted from the valuation as above developed, and leaves \$835,685.51 as the rate base applicable in this case.

Reports of operation in Muskogee for the twelve months ending October 31, 1921, show that 1,179,468 M cu. ft. of gas were sold. Assuming that there will be 10% leakage in Muskogee during 1922, (and the testimony shows that leakage at time of hearing was only 14% in Muskogee and was rapidly declining) the company must purchase in 1922, 1,310,520 M cu. ft. of gas. Industrial sales in 1921 were 345,297 M cu. ft. which, assuming that the same industrial business will be done in 1922, and deducting the amount thereof from total gas to be purchased, shows gas to be purchased for domestic purposes in 1922 to be 965,223 M cu. ft. which at 25 cents per M cu. ft., the city gate rate established by this Commission, will cost \$241,306.00.

General expense at Muskogee for the twelve months ending October 31, 1921, is shown by the company's reports to have been

\$53,232.00 (which will be discussed later) and distribution expenses for same period amount to \$29,007.00; thus the total expense of operation, including cost of domestic gas, will be \$323,545.00; deducting from this amount \$11,952.00, representing  $2\frac{1}{2}\%$  of the gross revenues at Muskogee, for the twelve months considered, paid to an engineering and management corporation and disallowed by the Commission for same reasons fully set forth in Order No. 1995, leaves \$311,593.00 as the total operating expense for 1922, based on the record of twelve months ending October 31, 1921, without taxes. Adding to this amount 13% of the rate basing valuation to cover interest at 8% and depreciation at 5%, develops \$420,232.00 as the necessary revenue for 1922, without taxes.

Total taxes paid by the Muskogee Gas & Electric Company in 1920 (paid in 1921) were reported as \$51,949.00. The Company reported to the Commission that taxes were apportioned in Muskogee,  $41\frac{1}{2}\%$  to the gas property and  $58\frac{1}{2}\%$  to the electric property, upon which basis the taxes paid on the gas property in 1921 amounted to \$21,558. Assuming that the same amount will be paid in 1922, which, however, the Commission considers excessive, the total revenue needed in 1922 is found to be \$441,790.00.

The company will sell in Muskogee in 1922, 834,171 M cu. ft. of gas for domestic purposes. At 50 cents per M cu. ft. this will yield \$417,085.00. Industrial sales, assuming that the volume will equal that of 1921, and indications are that it will be greater, will yield \$17,265.00, making total revenue for 1922, \$434,350.00. On the face of these figures estimated revenues in 1922 will be \$7,440.00 less than estimated expenses, including dividend and depreciation.

An investigation of the company's operating reports furnished the Commission during the past five years leads inevitably to the conclusion that excessive charges have been made in accounts 25 to 37, designated "general expense." As in the case of the Oklahoma City operation the Commission has never had a satisfactory analysis of the expenditures charged to this group of accounts, and a consideration of the figures purporting to reflect expenditures properly so chargeable, leads the Commission to the conviction that the charges reported are excessive and in a substantial proportion improper. For the fiscal year ending June 30, 1918, the Muskogee Gas & Electric Company reported general expense amounting to \$20,823.00. It

reported at the same time, 5,921 consumers, which develops a  
221 general expense per consumer in Muskogee of \$3.51. In the twelve months ending October 31, 1921, the period covering operations considered in this order, the company shows charges against general expense accounts of \$53,232.00. It reports at the same time 6,598 consumers which shows the general expense to have increased between 1918 and 1921 from \$3.51 per consumer to \$8.06 per consumer, or very much in excess of 100 per cent. The Commission is wholly without facts or figures explaining the necessity for any such increase in these charges, and considers the vast increase therein as not justified.

Considering the prospect that there will be a substantial increase in industrial sales in 1922, and in view of the conclusions already

stated with reference to general expense charges, the Commission is of the opinion that the revenues estimated as to be earned in 1922 will more than make up the apparent deficiency of approximately \$7,500.00, shown in the figures above set forth, and therefore, the Commission is of the opinion that a domestic rate of 50 cents per M cu. ft. in Muskogee is ample to meet the requirements of the company at the present time.

Wherefore, the Commission being fully advised in the premises and having given due consideration to all the facts, it is therefore ordered that rates for gas in the City of Muskogee, Oklahoma, shall be 50 cents per M cu. ft. for gas used for domestic purposes, and 25 cents per M cu. ft. for gas used for industrial purposes, provided that the first 500,000 cu. ft. of gas used for industrial purposes shall pay the domestic rate.

It is further ordered that a depreciation reserve account be established forthwith by the Muskogee Gas & Electric Company, and that all amounts herein allowed and earned for depreciation over and above 8% on the rate base be credited to said account, and that complete accounting for all charges against and balances in said reserve account be made to the Corporation Commission of Oklahoma henceforth in current reports of revenues and expenses.

It is further ordered that so long as a city gate rate of 35 cents per M cu. ft. is imposed upon the Muskogee Gas & Electric Company by authority of the United States District Court or other Federal Court, 13 cents per M may be collected from domestic patrons of said company in addition to the domestic rate herein prescribed, subject to refund as per previous order and bond.

This order shall be in full force and effect as of and from February 1, 1922, provided that consumers shall not be rebilled for gas already paid for.

Done at Oklahoma City, Oklahoma, on this 11th day of February, 1922.

CORPORATION COMMISSION OF  
OKLAHOMA.

(Signed)

CAMPBELL RUSSELL,  
*Chairman,*  
E. R. HUGHES,  
*Commissioner.*

Attest:

G. F. SMITH,  
*Sec'y.*

Before the Corporation Commission of Oklahoma.

Cause No. 4302. Order No. 1999.

In the Matter of the Adjustment of Gas Rates of THE OKLAHOMA GAS & ELECTRIC COMPANY in Oklahoma City, Enid, El Reno, Yukon, and Britton, Oklahoma.

*Supplemental Findings of Fact and Order.*

This Commission has heretofore, to wit, on the 18th day of January, 1922, issued its Order No. 1995, establishing rates for gas service in the Oklahoma City Division of the Oklahoma Gas & Electric Company. Rates for gas in the cities of Enid and El Reno also involved in this cause, and for Muskogee involved in Cause No. 4301, were not fixed in said order. The present supplemental order will establish rates for the cities of Enid and El Reno. Rates for Muskogee will be further deferred.

All findings made by the Commission in connection with Order No. 1995, which are general in character, effecting the relations between the Oklahoma Gas & Electric Company and any other corporation, are held applicable to the issues determined by the present order and are embodied herein without restatement. The same applies to findings as to dividends and depreciation.

**Enid and El Reno.**

The Commission does not have available as to the Enid and El Reno properties an inventory and appraisal made by its own engineer, such as was available as a basis for Order No. 1995. The Commission has available, however, reports furnished by the company from time to time purporting to give the historical cost of the property. Such reports reflect, in the opinion of the Commission, the present fair value of the property used and useful in furnishing gas for Enid and El Reno, consideration being given to the fact that as in the case of the Oklahoma City property a substantial proportion of the property existing at present was constructed or installed during the prevalence of abnormally high costs of material and labor, and that production new cost of such part of these properties today would be lower than the investment that they actually represent. The reproduction new value as of the present date, less depreciation, would not differ materially from the value herein used.

Investigation of the companies' reports referred to an elimination from the figures therein given of all factors except the physical plant, gives as the cost thereof as of December 31, 1920, the amount of \$333,975.81 for the Enid property and \$186,411.05 for El Reno. Addition of 20 per cent for overheads and intangibles add \$66,795.16 to the Enid figure, and \$37,282.21 to El Reno. Additions and better-

ments reported from January 1st to November 30, 1921, add \$26,173.58 to the Enid value and \$6,986.82 to El Reno giving the following figures as the rate basing valuations for the two cities, respectively: Enid, \$426,944.55 and El Reno, \$230,680.08, and these figures will be adopted.

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## Enid.

Computation of sales of gas by applying the prevailing rate at various times during the twelve months ending October 31, 1921, to the revenue reported for the respective periods under consideration, shows total gas sales in Enid for said twelve months to have been 538,532 M cu. ft. Assuming leakage at 10 per cent for the coming year, total purchases of gas for 1922 will equal those of 1921, and deducting the amount thereof, 116,267 M cu. ft. from total purchases of 1922, we find the domestic gas purchase for 1922 to be 482,102 cu. ft. At 25 cents per M cu. ft. this gas will cost \$120,525. The company had general expense of \$29,837, and distribution and maintenance expense of \$8,317, or total expense at Enid of \$158,679, including cost of domestic gas. From this expense is to be deducted two and one-half per cent of the gross revenue earned in the twelve months ending October 31, 1921, as in Order No. 1995, the amount deducted being \$5,653, and leaving \$153,826 as the total expense at Enid, less the two and one-half per cent of gross revenue paid to the engineering and management company. By adding 13 per cent of the rate-basing value of the property to this amount for the interest and depreciation herein authorized, we find the necessary revenue at Enid in 1922 to be \$208,528. This does not provide, however, for the payment of Taxes on the property.

The company's reports of revenue and expenses for the twelve months ending October 31, 1921, indicate the payment of \$20,332.20 for taxes. No testimony was furnished, however, showing what part of this amount represented federal or other taxes which the Commission might not be willing to allow as a proper charge against operation, but the company furnished exhibits, said to be copies of tax receipts for real and personal taxes, showing payment of \$17,330.24 in Garfield County, Oklahoma, for 1920, first half of said taxes having been paid December 20, 1920, and the last half June 14, 1921. This amount represents taxes not only on the gas property owned by the Oklahoma Gas & Electric Company in Garfield County but the property used for electric operation as well. The only basis available in this record for apportionment of the amount as between the gas and electric division appears to be Mr. Uhlendorf's summary of valuation of the property of the company in Enid, which appears in Uhlendorf's Exhibit No. 1, page 1, and Exhibit No. 4, page 3, shows the gas property of the company to be 44 per cent of the total. On this basis the amount of the taxes paid in Garfield County chargeable to the gas property would be \$7,625.30, and makes the total necessary revenue for this property for 1922, \$216,153.00.

The domestic gas sales for 1922 at the rate of 50 cents per M cu. ft. will yield \$211,132. Industrial gas in the amount of 116,267 M cu. ft., assuming industrial business for 1922 at the 1921 figure, will yield, at a purchase price of 20 cents per M and a sale price of 25 cents per M, \$5,814, making the total revenue from operation for 1922, \$216,946.00.

In view of the fact that the company has failed to make available in the record a comprehensive analysis of the general expense account, which the Commission considers excessive, and the fact that there is a strong downward trend in cost of materials and labor which should assure reduced operating expenses in 1922 compared with the twelve months ending October 31, 1921, the Commission considers the revenue above developed ample to provide all  
224 funds allowable for interest and depreciation and to provide a surplus which should be used in improving the condition of the property and reducing operating costs. The domestic rate for Enid will be fixed at 50 cents per M cubic feet.

#### El Reno.

Processes of computation identical with those fully stated as to Enid have been employed in developing the proper rate to be charged at El Reno. They show the following figures: total gas sales for twelve months ending October 31, 1921, 248,922 M cu. ft.; total purchases for 1922, assuming 10 per cent leakage, 276,580 M cu. ft.; industrial sales 1921, assumed to be the same for 1922, 59,428 M cu. ft.; domestic gas purchases for 1922, 217,152 M cu. ft., costing at 25 cents per M, \$54,288; general expense, \$16,315, and distribution and maintenance expense, \$3,782, giving total expense, without taxes, of \$74,385. Deducting two and one-half per cent gross revenues for 1921; being amount paid to the engineering and management corporation, \$2,579.00, the total expense becomes \$71,876. Adding 13 per cent of the rate-basing value, or \$29,988, the necessary revenue (without taxes) becomes \$101,794. Taxes computed as in case of Enid are chargeable in the sum of \$9,251, making total necessary revenue of \$111,045. Domestic gas sales at price of 55 cents per M cu. ft. will yield \$104,221, and industrial sales will yield \$2,972, bringing the total revenue to \$107,193.

Question may arise as to whether a rate which falls short of yielding in full the revenue which appears to be necessary can be a sufficient rate, and also (in El Reno) as to why the rate prescribed for that city should be higher than the rate prescribed for Enid. Considering these possible questions it will be stated that in the case of El Reno, as with Enid, the Commission has not received a comprehensive or satisfactory analysis of the general expense account and considers the same excessive. Attention is directed also to the fact that expenses properly chargeable against a depreciation reserve account have not been so charged, repairs and replacements having been paid for out of current revenues instead, and that to the extent that such items should have been charged against a depreciation

reserve account the showing herein as to necessary revenue is excessive.

The Commission is of the opinion that substantial economies in operation can be effected at El Reno and the company will be expected to bring about this result.

As to El Reno having a higher rate than that charged at Enid, attention is directed to figures on the valuation of the property used and useful in furnishing gas to consumers in the two cities, respectively. On the reproduction new valuation as of 1920 submitted by the company, the Enid property represents an investment of \$139.00 per consumer, while the El Reno property represents a corresponding investment of \$236.00. The reproduction value has not been used as a rate base, but a similar comparison based on the valuations which have been used in determining the rate shows that the Enid property represents a rate basing value of \$102.00 per consumer and the El Reno property \$131.00. Considered in the light of these valuation figures it will be seen that the El Reno rate offers a lower return to the owners of the property than is offered by the rate at Enid. While doubt exists as to why the El Reno investment per consumer should be so much greater than at Enid there is nothing in the record upon which the valuation in either city can be readjusted except as has been done.

225 In view of these considerations and all other facts referred to in connection with the Enid situation as applicable to El Reno, the Commission considers that the rate referred to will yield ample operating revenue in 1922 and is justified by the record, and the rate for gas at El Reno will be fixed at 55 cents per M cubic feet.

#### *Order.*

Wherefore, the Commission being fully informed in the premises and having given due consideration to all the facts in the record,

It is ordered that rates for gas in the city of Enid and the Enid Division of the Oklahoma Gas & Electric Company shall be 50 cents per M cu. ft. for gas used for domestic purposes, and in the city of El Reno 55 cents per M cu. ft. for gas used for domestic purposes, and 25 cents per M cu. ft. for gas used for industrial purposes; provided that the first 500,000 cubic feet of gas for industrial purposes shall pay the domestic rate.

It is further ordered that a depreciation reserve account be established forthwith by the Oklahoma Gas & Electric Company and that all amounts herein allowed and earned for depreciation over and above 8 per cent on the rate base be credited to said account, and that complete accounting for all charges against and balances in said reserve account be made to the Corporation Commission of Oklahoma henceforth in current reports of revenues and expenses.

It is further ordered that so long as a city gate rate of 35 cents per M cu. ft. is imposed upon the Oklahoma Gas & Electric Company by authority of the United States District Court or other Federal court, 13 cents per M cu. ft. may be collected from domestic

patrons of said company in addition to the domestic rate herein prescribed, subject to refund as per previous order and bond.

Further order is in preparation prescribing rates for Muskogee, and will be announced as soon as completed.

This order shall be in full force and effect as of and from January 1, 1922.

Done at Oklahoma City, Oklahoma, this the 27th day of January, 1922.

CORPORATION COMMISSION OF  
OKLAHOMA.

CAMPBELL RUSSELL,

*Chairman.*

ART L. WALKER,

*Commissioner.*

Attest:

G. F. SMITH,

*Secretary.*

225½

EXHIBIT D.

Before the Corporation Commission of the State of Oklahoma.

Cause No. 4301. Order No. 1979.

In the Matter of the Rates to be Charged by the Utilities Engaged in the Distribution of Natural Gas for Consumption in the Following Towns and Cities of the State of Oklahoma, to wit, Oklahoma City, Muskogee, El Reno, Enid, Yukon, Britton, Duncan, Marlow, Guthrie, Shawnee and Wagoner.

*Temporary Order.*

On the 16th day of December, 1921, the United States District Court for the Western District of Oklahoma, the Honorable John H. Cotterall sitting, in an application by the Oklahoma Natural Gas Company for a temporary injunction, this Commission was temporarily restrained from enforcing the present city gate rate applicable to the price of gas delivered for distribution by the Oklahoma Natural Gas Company in the cities and towns of Oklahoma City, Muskogee, El Reno, Enid, Yukon, Britton, Duncan, Marlow, Guthrie, Shawnee and Wagoner.

At the same time and in the same order restraining the Commission from interfering with any rate which the said Oklahoma Natural Gas Company might place into effect as against the utilities engaged in the distribution of natural gas in said towns, the court permitted an additional charge of 10¢ per M cu. ft. to be made and collected by the Oklahoma Natural Gas Company as a city gate rate. The following utilities distribute to the domestic and industrial consumers of gas in the towns mentioned:

In Oklahoma City, El Reno, Enid, Yukon and Britton, the Oklahoma Gas & Electric Company.

In Muskogee, the Muskogee Gas & Electric Company.

In Duncan and Marlow, the Southwestern Oklahoma Gas & Fuel Company.

In Guthrie, the Guthrie Gas Light, Fuel & Improvement Co.

In Shawnee, the Shawnee Gas & Electric Company.

In Wagoner, the Commonwealth Public Service Co., or its successor.

It is apparent to the Commission and should go without saying that the distributing utilities who are required to pay an increase of 10¢ per M cu. ft. for the gas purchased for distribution in these towns and cities, cannot distribute the gas purchased at such a price at the same rate that they have heretofore charged their consumers for gas which cost 10¢ per M cu. ft. less than the rate authorized and established by the United States court. For this reason and in order that justice may be done and that a continuation of service to the patrons of the various utilities mentioned may be had, the Commission is of the opinion and finds that the increase authorized and ordered by the said United States District Court for the Western District of Oklahoma, should be passed on to the distributing utilities and that a proportionate increase for the distribution of natural gas to the consuming public be made.

226 The Commission further finds that the straight increase of 10¢ per M cu. ft. which the Oklahoma Natural Gas Company has been authorized to make, will not be sufficient to completely protect the distributing utilities on account of the loss of gas from leakage, which, under the rate system heretofore adopted, falls upon the distributing company, and on account of other possible contingencies such as failure to collect bills.

The Commission is of the opinion and finds that it will require an increase of 13¢ per M cu. ft. to cover the additional cost of gas, together with the loss suffered from leakage. The Commission finds that an increase of 13¢ per M cu. ft. is justified under the circumstances, pending the final rendition of judgment in the cause now pending in the United States District Court for the Western District of Oklahoma.

It is therefore the order of the Commission, premises considered, that the Oklahoma Gas & Electric Company, distributing natural gas in the cities and towns of Oklahoma City, El Reno, Enid, Yukon and Britton; the Muskogee Gas & Electric Company distributing gas in Muskogee; the Southwestern Oklahoma Gas & Fuel Company, distributing gas in Duncan and Marlow; the Guthrie Gas Light, Fuel & Improvement Company, distributing natural gas in Guthrie; the Shawnee Gas & Electric Company, distributing gas in the City of Shawnee, and the Commonwealth Public Service Company or its successor, distributing gas in Wagoner, be and they each are hereby authorized to place into immediate effect, pending the final outcome and decision in the United States Court for the Western Dis-

trict of Oklahoma of the case now pending before it, in which the Oklahoma Natural Gas Company applied for a temporary injunction, a temporary increase in the rate charged for natural gas distributed by said utilities of 13¢ per M cu. ft. for all gas distributed for domestic consumption.

It is further ordered that each of said utility companies be and they are hereby ordered and required to make, furnish and file with this Commission a bond, the amount of which is to be determined by the Commission, guaranteeing a refund to the gas consumers of any amount charged and collected pending the outcome of the litigation mentioned, and which may be in excess of any rate finally established and put into effect as a result thereof.

Done at Oklahoma City this the 19th day of December, 1921.

CORPORATION COMMISSION OF  
OKLAHOMA.

(Signed)

CAMPBELL RUSSELL,

*Chairman.*

ART L. WALKER,

*Commissioner.*

E. R. HUGHES,

*Commissioner.*

Attest:

G. F. SMITH,

*Secretary.*

Endorsed: Filed in District Court on February 24, 1922. Arnold C. Dolde, Clerk, by E. G. Offutt, Deputy.

227 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and Muskogee Gas and Electric Company, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Free-ling, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Separate Answer of the Defendants The City of Oklahoma City and Charles H. Ruth, City Attorney of Oklahoma City.*

Come now the defendants, the City of Oklahoma City and Charles H. Ruth, and for answer to the plaintiff's first amended bill of complaint, allege and state:

1. That these answering defendants deny generally and specifically each and every material allegation contained in the plaintiff's first amended bill of complaint, except such as are herein specifically admitted.

2. These answering defendants admit that the City of Oklahoma City is a Municipal Corporation created and existing under and by virtue of the laws of the State of Oklahoma, and that Charles H. Ruth is the duly appointed, qualified and acting Municipal Counselor of the said defendant City.

3. These defendants for further answer show to this court that the territory of Oklahoma was erected into a state by act of Congress in 1907 and adopted a constitution in the year 1907.

4. That under and by virtue of the constitution of the state of Oklahoma, a body was created and termed a Corporation Commission and the said Corporation Commission was given power 228 to establish rates to be charged by public service corporations; and that the said constitution provided that the legislature of the said state should have power to enlarge the powers of the said Corporation Commission over rates in cities of the first class in the said state.

5. That prior to the year 1913, the said Corporation Commission was without power to fix or establish rates to be charged by gas and electric companies within the city of Oklahoma City; and the defendants allege that on the 24th day of September, 1909, by ordinance #1119, the plaintiff, Oklahoma Gas & Electric Company, was granted a franchise for the purpose of selling and distributing natural and manufactured gas to the said city and the public generally; and that Section Three of the said franchise provided as follows:

#Section 3. During the life of this franchise the said grantee shall have the right to charge said city and the inhabitants thereof, not to exceed 35¢ per thousand cubic feet for natural gas furnished, provided, however, that said grantee in every case where the consumer's bill is less than \$1.00 per month, may charge a minimum rate of \$1.00 per month for each service connected."

That the said ordinance granting said franchise was submitted to the vote of the people as provided by law and was by the people approved, and the said Oklahoma Gas & Electric Company filed its written acceptance of this ordinance and the terms thereof within fifteen (15) days after the date of such approval as provided in Section Ten of said ordinance.

6. That at the time of the passage of said ordinance and its approval by the people of Oklahoma City and its acceptance by the said Oklahoma Gas & Electric Company, this defendant City had

power and authority to make and enter into such contract by virtue of the constitution and laws of the State of Oklahoma.

7. That thereafter, to wit, in the year of 1913, the legislature of the State of Oklahoma exercising the powers conferred upon it by the constitution of the state, conferred upon the Corporation Commission the power to fix rates and charges within municipalities for the furnishing of natural gas and electric current.

8. That under its franchise and with knowledge of the powers of the Corporation Commission, the said complainant continued to furnish gas to this defendant City and the inhabitants thereof; and that in the month of March in the year 1916, the Corporation Commission promulgated an order, which said order is known and designated as Order #1028, and is in part as follows:

"It is therefore considered, ordered and adjudged that each and every corporation (mentioned in Chapter 93 of the laws of 1913) supplying natural gas for domestic consumption and for conveying of gas by pipe lines for delivery, or for furnishing heat or light with gas, or in any way, directly or indirectly, supplying gas \* \* \* for domestic consumption is hereby required to construct, equip and maintain its pipe lines, mains and distributing systems so as to be at all times able to furnish an adequate supply of gas for domestic consumption, and is hereby ordered to furnish and supply at all times an adequate amount of the proper quality of natural gas for heating, cooking and lighting for domestic consumption."

These answering defendants for further answer state that in the year 1918, complaint was filed before the Corporation Commission of the State of Oklahoma and upon such hearing of such complaint, the Manager of the Oklahoma Gas & Electric Company testified under oath that he knew of the said order #1028 and that he had known of the same continuously from the date of its promulgation in March 1916; but that he had never tried to comply with the said order but had relied entirely upon one company, to wit, the Oklahoma Natural Gas Company, for the supply, but presumed that he could obtain a supply from other sources and that he knew it was available from other sources, but that he or his company, to wit, the Oklahoma Gas & Electric Company, had never attempted to secure gas from any other source and that the people of the said city were wholly at the mercy of the Oklahoma Natural Gas Company and that if the Oklahoma Natural Gas Company refused to supply the Oklahoma Gas & Electric Company, that the people of the said City would be totally without gas.

10. These answering defendants assert that there are other sources of supply, there being untold and unestimated billions of cubic feet of gas available in Oklahoma that might be secured by the Oklahoma Gas & Electric Company at prices ranging from 2¢ to 5¢ per

thousand cubic feet and that the said gas wells are now mudded in and shut off because there is no market for the said gas.

11. These answering defendants further state that the Oklahoma Natural Gas Company has at this time a contract with numerous gas wells in and about Cushing, Oklahoma, and in the Osage  
230 country at the price of 2¢ per thousand cubic feet, and these defendants are informed and so believe that the said Oklahoma Natural Gas Company is using gas from wells where the cost of gas is 10¢ per thousand cubic feet and that the said gas is being used from the last said wells for no other purpose than to cause it to appear to this court that the cost of natural gas to them has greatly increased.

12. These answering defendants further state that they are advised and so believe upon the authority of the bulletin of the Bureau of Mines issued under the authority of the United States that Natural Gas in Oklahoma contains approximately one gallon of gasoline to every thousand cubic feet of gas, and that the Oklahoma Natural Gas Company maintains as many as five extraction plants between its fields and Oklahoma City for the purpose of extracting gasoline, and that the said Oklahoma Natural Gas Company has not included in its schedule of revenues it derives from its business, any money derived from the sale of said gasoline.

13. These answering defendants for further answer say that from the granting of the franchise until the year 1921, the Oklahoma Gas & Electric Company had an agreement with the Oklahoma Natural Gas Company whereby the Oklahoma Gas & Electric Company was to distribute gas in Oklahoma City and was to pay the Oklahoma Natural Gas Company two-thirds of its gross receipts and retain one-third thereof for distribution, and that upon the basis of one-third and two-thirds division, the rate of 35¢ at the city gate would only entitle the Oklahoma Gas & Electric Company, if it was entitled to anything above its franchise rate, the sum of  $52\frac{1}{2}$ ¢ per thousand cubic feet for natural gas, the said sum being  $17\frac{1}{2}$ ¢ over and above the 35¢ gas rate and being  $33\frac{1}{3}$ % of the revenues collected for the sale of gas.

14. These answering defendants further state that they have not threatened and are not threatening to enjoin through the courts of this state the Oklahoma Gas & Electric Company from doing any legal or lawful act.

15. These answering defendants further state that the City of Oklahoma City, or its Municipal Counselor, or the Corporation  
231 Commission of the State of Oklahoma have never attempted to lower the rates below that set forth in the franchise of the said company, but from time to time and upon each and every request made by the Oklahoma Gas & Electric Company, the Corporation Commission has increased the said rates until the said Oklahoma Gas & Electric Company receive the sum of 58¢ per thousand cubic feet for gas, which said sum is 23¢ in excess of the rate set forth in

the franchise granted to the said Oklahoma Gas & Electric Company, and that the said rate is more than sufficient to pay reasonable return upon the investment of the Oklahoma Gas & Electric Company, together with the reasonable cost for replacement, amortization and operating expenses; and further state that if the said company should exercise its right to purchase gas in open market and pipe the same, that it could secure and deliver gas at the Oklahoma City gate for the sum of 16¢ per thousand cubic feet, which said sum would be sufficient to give to the said Oklahoma Gas & Electric Company a reasonable rate upon its investment and provide a sum for amortization and overhead expenses.

Wherefore these answering defendants deny that the complainants are entitled to injunctive relief as prayed for, and pray that the temporary restraining order therein prayed for be denied and the complainants' second amended bill of complaint be dismissed and that these answering defendants go hence with all their reasonable costs in this behalf expended.

C. H. RUTH,  
*Atty. for Okla. City.*

Endorsed: Filed in District Court Feby. 25, 1922. Arnold C. Dolde, Clerk, By M. V. Haws, Deputy.

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No. 1.

In the District Court of the United States for the Western District of Oklahoma.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

COUNTY OF COOK,  
*State of Illinois, ss:*

Edward N. Strait, being first duly sworn, on oath deposes and says: I am thirty-six (36) years of age and a resident of the village of Oak Park, State of Illinois, manager of the Rate Department of the Bylesby Engineering and Management Corporation, in the City of Chicago, State of Illinois, and an engineer and rate expert by profession. I obtained my engineering education in the University of Wisconsin, graduating from the College of Engineering thereof in 1906. I received the degree of electrical engineer from the University of Wisconsin in 1912. I am an associate member of the

American Institute of Electrical Engineers and of the Illuminating Engineering Society and a member of the Western Society of Engineers. During 1906 and 1907, I was employed in the manufacturing and testing of electrical apparatus. From 1907 to 1916, inclusive, I was a member of the staff of the Railroad Commission of Wisconsin engaged as an expert in valuation, inspection of service and investigation of public utility rates and related matters for the Railroad Commission of Wisconsin. Since 1916, I have been, and at present am, Manager of the Rate Department of the Byllesby Engineering and Management Corporation.

#### Valuation.

I have carefully read the affidavit of Edward D. Uhlenborn, dated January 24, 1922, in the above entitled matter, wherein he certified that in his opinion the fair valuation at the present time of the Oklahoma Gas & Electric Company, used and useful in the distribution of natural gas in Oklahoma City and the Towns of Bethany, Britton and Yukon is not less than \$2,660,583.

#### Net Earnings Necessary to Yield Fair Returns.

The reports of decisions of the Corporation Commission of Oklahoma indicate that the Corporation Commission has uniformly allowed five per cent (5%) for depreciation and amortization of natural gas distributing properties. This is in line with corresponding allowances made by other public service commissions.

During the year 1921, the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company were compelled to refinance in large measure, because a large part of their outstanding obligations fell due at that time. I have analyzed the cost of that financing and find that, after taking into account the marketing discounts and expense, as well as the interest on the par value of the securities issued, the use of this borrowed capital costs the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company approximately 9.9 per cent per annum. The securities represented by the issues are twenty (20) year bonds and ten (10) year notes and hence the expense thereof is fixed for a long period of time. An allowance of ten (10) per cent for returns, in addition to depreciation, would afford only a slight margin above the cost of the borrowed capital.

234 I have ascertained the amount of net earnings required to equal 15 per cent for depreciation, amortization and interest on the fair valuation of the property, set forth above, to be \$399,087.

#### Net Earnings under Present Rates.

I have analysed the operating expenses and gas sales of the Gas Department of the Oklahoma Gas & Electric Company, in its Oklahoma City division, for the years ending September 30, October 31, and November 30, 1921.

I have calculated the cost of gas received at the city gates from the Oklahoma Natural Gas Company under a gate rate of 25¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers above the first 500,000 cubic feet per month for which amount sold in excess of 500,000 cubic feet per month the gate rate is 20¢ per 1,000 cubic feet.

I have also calculated the cost of gas received at the city gates from the Oklahoma Natural Gas Company under a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month for which I have calculated the cost at the city gates of 20¢ per 1,000 cubic feet.

I have ascertained the amount of net earnings which would be available for depreciation, amortization and returns, assuming the same volume of business as for the years ending September 30, October 31, and November 30, 1921, if the present retail rates to the public and gate rates to the Oklahoma Natural Gas Company should be effective for a year. The operating results and amounts available for depreciation, amortization and returns under these conditions would be, as follows:

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## Section I.

Based on Conditions for Year Ending September 30, 1921.

The present retail rates to the public effective in Oklahoma City, Bethany, Britton and Yukon, Oklahoma, comprising the Oklahoma City division are, as follows:

A. When the Gate Rate is 25¢ and 20¢ as heretofore stated:

First 500,000 cu. ft. per month	@ 45¢ net per 1,000 cu. ft.
Excess	" " " " 25 " " 1,000 " "

B. When the Gate Rate is 35¢ and 20¢ as heretofore stated:

First 500,000 cu. ft. per month	@ 58¢ net per 1,000 cu. ft.
Excess	" " " " 25 " " 1,000 " "

A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the Oklahoma City division during the year ending September 30, 1921, was 3,349,678,000 cubic feet, which was divided between the two rate classifications approximately, as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	2,356,045,000 Cu. ft.
Excess " " " " .....	993,633,000 " "
<b>Total.....</b>	<b>3,349,678,000 " "</b>

## Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are, as follows:

2,356,045 M cu. ft. at 45¢ per M.....	\$1,060,220
993,633 " " " " 25 " " .....	248,408
Total Gross Gas Revenues.....	\$1,308,628

## Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending September 30, 1921, is therefore 4,187,098,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for by the Oklahoma Gas & Electric Company at the rate of 25¢ per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be, as follows:

3,193,465 M cu. ft. at 25¢ per M.....	\$798,366
993,633 " " " " 20 " " .....	198,727
Total 4,187,098	\$997,093

Other operating expenses for the year ending September 30, 1921, exclusive of depreciation, amortization and returns amounted to.....

\$235,971

Total operating expenses would under present gate rates therefore be.....

\$1,233,064

## Amount Available for Depreciation, Amortization, and Returns.

There would be available for depreciation, amortization and returns, under present rates, \$75,564.

## B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation, but using a rate of 58¢ instead of 45¢ per 1,000 cubic feet sold for the first 500,000 cubic feet per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cubic feet for all gas received by the Company, except that portion which equals the amount sold to customers in excess of 500,000 cubic feet per month, the results are, as follows:

## Gross Revenues:

2,356,045 M cu. ft. at 58¢ per M.....	\$1,366,506
993,633 " " " " 20 " " .....	248,408
Total.....	<u>\$1,614,914</u>

## Operating Expenses:

## Cost of Gas:

3,193,465 M cu. ft. at 35¢ per M.....	\$1,117,713
993,633 " " " " 25 " " .....	<u>248,408</u>

Total Cost of Gas.....	\$1,316,440
Other Operating Expenses.....	<u>235,971</u>

Total Operating Expenses..... \$1,552,411

Amount available for depreciation, amortization, and returns,  
\$62,503.

237

## Section II.

Based on Conditions for Year Ending October 31, 1921.

## A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the Oklahoma City division during the year ending October 31, 1921, was 3,151,543,000 cubic feet, which was divided between the two rate classifications approximately, as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	2,378,941,000 cu. ft.
Excess " " " " .....	<u>772,602,000 " "</u>
Total.....	3,151,543,000 " "

## Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are, as follows:

2,378,941 M cu. ft. at 45¢ per M.....	\$1,070,523
772,602 " " " " 25 " " .....	<u>193,150</u>
Total Gross Gas Revenues.....	<u>\$1,263,673</u>

## Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city

gate to furnish to customers the amount of gas sold during the year ending October 31, 1921, is therefore 3,939,430,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for by the Oklahoma Gas & Electric Company at the rate of 25¢ per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be, as follows:

3,166,828 M cu. ft. at 25¢ per M.....	\$791,707
772,602 " " " " 20 " " .....	154,520
<b>Total 3,939,430 " " "</b>	<b>\$946,227</b>

238 Other operating expenses for the year ending October 31, 1921, exclusive of depreciation, amortization and returns amounted to \$232,291.

Total operating expenses would under present gate rates therefore be \$1,178,518.

#### Amount Available for Depreciation, Amortization, and Returns.

There would be available for depreciation, amortization and returns, under present rates, \$85,155.

#### B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 58¢ instead of 45¢ per 1,000 cubic feet sold for the first 500,000 cubic feet per month, and a rate of 35¢ instead of 25¢ per 1,000 cubic feet for all gas received by the Company, except that portion which equals the amount sold to customers in excess of 500,000 cubic feet per month, the results are as follows:

##### Gross Revenues:

2,378,941 M cu. ft. at 58¢ per M.....	\$1,379,786
772,602 " " " " 25¢ " " .....	193,150
<b>Total Gross Revenues.....</b>	<b>\$1,572,936</b>

##### Operating Expenses:

###### Cost of Gas:

3,166,828 M cu. ft. at 35¢ per M.....	\$1,108,390
772,602 " " " " 20¢ " " .....	154,520

<b>Total Cost of Gas.....</b>	<b>\$1,262,910</b>
<b>Other Operating Expenses.....</b>	<b>232,291</b>

**Total Operating Expenses..... \$1,495,201**

Amount available for depreciation, amortization, and returns, \$77,735.

### Section III.

Based on Conditions for Year Ending November 30, 1921.

#### A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the Oklahoma City division during the year ending November 30, 1921, was 3,196,419,000 cubic feet, which was divided between the two rate classifications approximately as follows:

239	Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....		2,387,607,000 cu. ft.
Excess " " " " .....		808,812,000 " "
Total .....		3,196,419,000 " "

#### Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are, as follows:

2,387,607 M cu. ft. at 45¢ per M.....	\$1,074,423
808,812 " " " " 25 " " .....	202,203
Total Gross Gas Revenues.....	\$1,276,626

#### Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending November 30, 1921, is therefore 3,995,524,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for by the Oklahoma Gas & Electric Company at a rate of 25¢ per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be, as follows:

3,186,712 M cu. ft. at 25¢ per M.....	\$796,678
808,812 " " " " 20 " " .....	161,762
Total 3,995,524 " " " .....	\$958,440

Other operating expenses for the year ending November 30, 1921, exclusive of depreciation, amortization and returns amounted to..... \$235,370

Total operating expenses would under present gate rates therefore be..... \$1,193,810

Amount Available for Depreciation, Amortization, and Returns.

There would be available for depreciation, amortization and returns, under present rates, \$82,816.

240 B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 35¢ instead of 45¢ per 1,000 cubic feet sold for the first 500,000 cubic feet per month, and a gate rate of 20¢ instead of 25¢ per 1,000 cubic feet for all gas received by the company except that portion which equals the amount sold to customers in excess of 500,000 cubic feet per month, the results are, as follows:

Gross Revenues:

2,387,607 M. cu. ft. at 58¢ per M .....	\$1,384,812
808,812 " " " " 25 " " .....	202,203

Total Gross Revenue..... \$1,587,015

Operating Expenses:

Cost of Gas:

3,186,712 M. cu. ft. at 35¢ per M .....	\$1,115,349
808,812 " " " " 25 " " .....	161,762

Total Cost of Gas .....

Other Operating Expenses .....

Total Operating Expenses .....

Amount Available for Depreciation, Amortization and Returns, \$74,534.

(Signed)

EDWARD N. STRAIT.

Subscribed and sworn to before me this 8th day of February, A. D., 1922.

(Signed)

JOHN P. RYAN,  
Notary Public.

My Commission expires July 11, 1923.

Endorsed: Filed in District Court on February 16, 1922. Arnold J. Dolde, Clerk. By F. G. Offutt, Deputy.

In the District Court of the United States for the Western District of Oklahoma.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

COUNTY OF COOK,  
State of Illinois, ss:

Edward N. Strait, being first duly sworn, on oath deposes and says: I am thirty-six (36) years of age and a resident of the village of Oak Park, State of Illinois, manager of the Rate Department of the Byllesby Engineering and Management Corporation, in the City of Chicago, State of Illinois, and an engineer and rate expert by profession. I obtained my engineering education in the University of Wisconsin, graduating from the College of Engineering thereof in 1906. I received the degree of electrical engineer from the University of Wisconsin in 1912. I am an associate member of the American Institute of Electrical Engineers and of the Illuminating Engineering Society and a member of the Western Society of Engineers. During 1906 and 1907, I was employed in the manufacturing and testing of electrical apparatus. From 1907 to 1916, inclusive, I was a member of the staff of the Railroad Commission of Wisconsin engaged as an expert in valuation, inspection of service and investigation of public utility rates and related matters for the Railroad Commission of Wisconsin. Since 1916, I have been, and at present am, Manager of the Rate Department of the Byllesby Engineering and Management Corporation.

#### *Valuation.*

I have carefully read the affidavit of Edward D. Uhlendorf, dated January 24, 1922, in the above entitled matter, wherein he certified that in his opinion the fair valuation at the present time of the Oklahoma Gas & Electric Company used and useful in the distribution of natural gas in the Enid and El Reno division is not less than the following amounts:

Enid Division .....	\$626,766
El Reno Division .....	354,146

### Net Earnings Necessary to Yield Fair Returns.

The reports of decisions of the Corporation Commission of Oklahoma indicate that the Corporation Commission has uniformly allowed five per cent (5%) for depreciation and amortization of natural gas distributing properties. This is in line with corresponding allowances made by other public service commissions.

During the year 1921, the Oklahoma Gas and Electric Company and the Muskogee Gas & Electric Company were compelled to refinance in a large measure, because a large part of their outstanding obligations fell due at that time. I have analyzed the cost of that financing and find that, after taking into account the marketing discounts and expense as well as the interest on the par value of the securities issued, the use of this borrowed capital costs the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company approximately 9.9 percent per annum. The securities represented

by the issues are twenty (20) year bonds and ten (10) year notes and hence the expense thereof is fixed for a long period of time. An allowance of ten (10) per cent for returns, in addition to depreciation, would afford only a slight margin above the cost of the barrowed capital.

I have ascertained the annual amount of net earnings required to equal 15 per cent for depreciation, amortization and interest on the fair valuation, set forth above, to be, by divisions, as follows:

Enid Division .....	\$94,015
El Reno Division.....	53,122

### Net Earnings under Present Rates.

I have analyzed the operating expenses and gas sales of the gas department of the Oklahoma Gas & Electric Company in its Enid and El Reno divisions for the years ending September 30th, October 31, and November 30, 1921.

I have calculated the cost of gas received at the city gates from the Oklahoma Natural Gas Company under a gate rate of 25¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of the first 500,000 cubic feet per month, and at a gate rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet.

I have also calculated the cost of gas received at the city gates from the Oklahoma Natural Gas Company under a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a gate rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet.

I have ascertained that amount of net earnings which would be available for depreciation, amortization and returns assuming the same volume of business as for the years ending September 30th, October 31, and November 30, 1921, if the present retail rate to the

public and gate rates to the Oklahoma Natural Gas Company should be effective for a year. The amounts which would be so available are as follows:

244 A. Calculations Based on Gate Rate of 25¢ and 20¢.

Based on Conditions for Year Ending September 30, 1921.

Enid Division .....	\$28,745
El Reno Division.....	10,261

Based on Conditions for Year Ending October 31, 1921.

Enid Division .....	\$29,065
El Reno Division.....	8,987

Based on Conditions for Year Ending November 30, 1921.

Enid Division .....	\$27,120
El Reno Division.....	8,245

B. Calculations Based on Gate Rate of 35¢ and 20¢.

Based on Conditions for Year Ending September 30, 1921.

Enid Division .....	\$26,291
El Reno Division.....	9,721

Based on Conditions for Year Ending October 31, 1921.

Enid Division .....	\$28,500
El Reno Division.....	8,657

Based on Conditions for Year Ending November 30, 1921.

Enid Division .....	\$26,786
El Reno Division.....	7,921

The derivation of these results is set forth under captions, as follows:

Section I—Enid Division.

Section II—El Reno Division.

Section I.

Enid Division.

Section I—Subsection a.

Based on Conditions for Year Ending September 30, 1921.

The present retail rates to the public effective in Enid, Oklahoma, comprising the Enid Division are as follows:

A. When the Gate Rate is 25¢ and 20¢ as heretofore stated:

First 500,000 cu. ft. per month at 50¢ net per 1,000 cu. ft.
Excess " " " " 25 " " 1,000 " "

245 B. When the Gate Rate is 35¢ and 20¢ as heretofore stated:

First 500,000 cu. ft. per month at 63¢ net per 1,000 cu. ft.
Excess " " " " 25 " " 1,000 " "

A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the Enid Division during the year ending September 30, 1921, was 670,665,000 cu. feet, which was divided between the two rate classifications approximately as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	476,964,000 cu. ft.
Excess " " " " .....	193,701,000 "
Total.....	670,665,000

#### Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are as follows:

476,964 M cu. ft. at 50¢ per M.....	\$238,482
193,701 " " " 25 " " .....	48,425

Total Gross Gas Revenues.....	\$286,907
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#### Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending September 30, 1921, is therefore 838,331,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for by the Oklahoma Gas & Electric Company at the rate of 25¢ per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be as follows:

644,630 M cu. ft. at 25¢ per M.....	\$161,158
193,701 " " " 20 " " .....	38,740
Total.....	838,331
	\$199,898

246 Other operating expenses for the year ending September 30, 1921, exclusive of depreciation, amortization and returns amounted to \$58,261.

Total operating expenses would under present gate rates therefore be \$258,159.

#### Amount Available for Depreciation, Amortization, and Returns.

There would be available for depreciation, amortization and returns, under present rates \$28,748.

#### B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 63¢ instead of 30¢ per 1,000 cu. ft. sold for the first 500,000 cu. ft. per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cu. ft. for all gas received by the company except that portion which equals the amount sold to customers in excess of 500,000 cu. ft. per month, the results are as follows:

##### Gross Revenues:

476,964 M cu. ft. at 63¢ per M.....	\$300,487
193,701 " " " 25¢ " " .....	48,425

Total Gross Gas Revenues.....	\$348,912
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##### Operating Expenses:

##### Cost of Gas:

644,630 M cu. ft. at 35¢ per M.....	\$225,620
193,701 " " " 20¢ " " .....	38,740

Total Cost of Gas.....	\$264,360
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Other Operating Expenses.....	58,261
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Total Operating Expenses.....	\$322,621
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Amount Available for Depreciation, Amortization and Returns, \$26,291.

#### Section I.

##### Subsection b.

Based on Conditions for Year Ending October 31, 1921.

#### A. Calculations Based on Gate Rate of 25¢ and 20¢.

247 The total amount of gas sold in the Enid division during the year ending October 31, 1921, was 616,492,000 cubic feet which was divided between the two rate classifications approximately as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	476,289,000 cu. ft.
Excess " " " .....	140,203,000 "
Total.....	616,492,000

## Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are as follows:

476,289 M cu. ft. at 50¢ per M.....	\$238,145
140,203 " " " 25¢ " " .....	35,051
Total Gross Gas Revenues.....	\$273,196

## Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending October 31, 1921, is therefore 770,615,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for, by the Oklahoma Gas & Electric Company at the rate of 25¢ per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be as follows:

630,412 M cu. ft. at 25¢ per M.....	\$157,603
140,203 " " " 20¢ " " .....	28,041
Total.....	770,615
	\$185,644

Other operating expenses for the year ending October 31, 1921, exclusive of depreciation, amortization and returns amounted to .....	\$58,487
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Total operating expenses would under present gate rates therefore be.....	\$244,131
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## 248 Amount Available for Depreciation, Amortization, and Returns.

There would be available for depreciation, amortization and returns, under present rates \$29,065.

## B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 63¢ instead of 50¢ per 1,000 cu. ft. sold for the first 500,000 cu. ft. per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cu. ft. for all

gas received by the company except that portion which equals the amount sold to customers in excess of 500,000 cu. ft. per month, the results are as follows:

Gross Revenues:

476,289 M cu. ft. at 63¢ per M.....	\$300,621
140,203 " " " 25¢ " ".....	35,051
Total Gross Gas Revenues.....	\$335,672

Operating Expenses:

Cost of Gas:

630,412 M cu. ft. at 35¢ per M.....	\$220,644
140,203 " " " 20¢ " ".....	28,041
Total Cost of Gas.....	248,685
Other Operating Expenses.....	58,487
Total Operating Expenses.....	307,172

Amount Available for Depreciation, Amortization, and Returns 28,500.

Section 1.

Subsection c.

Based on Conditions for Year Ending November 30, 1921.

A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the Enid division during the year ending November 30, 1921, was 568,399,000 cubic feet, which was divided between the two rate classifications approximately as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	462,573,000 cu. ft.
Excess " " " ".....	105,826,000 "
Total.....	568,399,000

249 Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are as follows:

462,573 M. cu. ft. at 50¢ per M.....	\$231,287
105,826 " " " 25¢ " ".....	26,456
Total Gross Gas Revenues.....	\$257,743

## Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending November 30, 1921, is therefore 710,499,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for, by the Oklahoma Gas & Electric Company at the rate of 25¢ per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be as follows:

604,673 M cu. ft. at 25¢ per M.....	\$151,168
105,826 " " " 20¢ " ".....	21,165
Total.... 710,499	<u>\$172,333</u>

Other operating expenses for the year ending November 30, 1921, exclusive of depreciation, amortization and returns amounted to.....	<u>\$58,290</u>
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Total operating expenses would under present gate rates therefore be .....	<u>\$230,623</u>
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## Amount Available for Depreciation, Amortization, and Returns.

There would be available for depreciation, amortization and returns, under present rates \$27,120.

## B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 63¢ instead of 50¢ per 1,000 cu. ft. sold for the first 500,000 cu. ft. per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cu. ft. for all gas received by the company except that portion which equals the amount sold to customers in excess of 500,000 cu. ft. per month, the results are as follows:

## Gross Revenues:

462,573 M cu. ft. at 63¢ per M.....	\$291,421
105,826 " " " 25¢ " ".....	26,456
Total Gross Gas Revenue.....	<u>\$317,877</u>

## Cost of Gas:

604,673 M cu. ft. at 35¢ per M.....	\$211,636
105,826 " " " 20¢ " ".....	21,165
Total Cost of Gas.....	\$232,801
Other Operating Expenses.....	58,290
Total Operating Expenses.....	\$291,091

Amount available for Depreciation, Amortization and Returns  
\$26,786.

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## Section II.

## El Reno Division.

## Section II.

## Subsection a.

Based on Conditions for Year Ending September 30, 1921.

The present retail rates to the public effective in El Reno, Oklahoma, comprising the El Reno division are as follows:

A. When the Gate Rate is 25¢ and 20¢ as heretofore stated:

First 500,000 cu. ft. per month at 55¢ net per 1,000 cu. ft.	
Excess " " " " " 25¢ " " 1,000 " "	

B. When the Gate Rate is 35¢ and 20¢ as heretofore stated:

First 500,000 cu. ft. per month at 68¢ net per 1,000 cu. ft.	
Excess " " " " " 25¢ " " 1,000 " "	

## A. Calculations Based on Gate Rate of 25¢ and 20¢

The total amount of gas sold in the El Reno division during the year ending September 30, 1921 was 253,489,000 cubic feet, which was divided between the two rate classifications approximately as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	193,228,000 cu. ft.
Excess " " " " " ".....	60,261,000 "
Total .....	253,489,000 "

## Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are as follows:

193,228 M cu. ft. at 55¢ per M.....	\$106,275
60,261 " " " " 25¢ " ".....	15,065

Total Gross Gas Revenues..... \$121,340

#### Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending September 30, 1921, is therefore 316,861,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per 252 month, is paid for, by the Oklahoma Gas & Electric Company at the rate of 25¢ per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be as follows:

256,600 M cu. ft. at 25¢ per M.....	\$64,150
60,261 " " " " 20¢ per M.....	12,052

Total.. 316,861 \$76,202

Other operating expenses for the year ending September 30, 1921, exclusive of depreciation, amortization and returns amounted to..... \$34,877

Total operating expenses would under present gate rates therefore be..... \$111,079

#### Amount Available for Depreciation, Amortization and Returns.

There would be available for depreciation, amortization and returns, under present rates..... \$10,261

#### B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 65¢ instead of 55¢ per 1,000 cu. ft. sold for the first 500,000 cu. ft per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cu. ft. for all gas received by the company except that portion which equals the amount sold to customers in excess of 500,000 cu. ft. per month, the results are as follows:

#### Gross Revenues:

193,228 M cu. ft. at 65¢ per M.....	\$131,395
60,261 " " " " 25¢ " ".....	15,065

Total Gross Gas Revenue..... \$146,460

## Operating Expenses:

## Cost of Gas:

256,600 M cu. ft. at 35¢ per M.....	\$89,810
60,261 " " " " 20¢ " " .....	12,052

Total Cost of Gas.....	\$101,862
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Other Operating Expenses.....	34,877
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Total Operating Expenses.....	\$136,739
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Amount Available for Depreciation, Amortization and Returns,  
9,721.

253

## Section II.

## Subsection b.

Based on Conditions for Year Ending October 31, 1921.

## A. Calculations Based on Gate Rate of 25¢ and 20¢

The total amount of gas sold in the El Reno division during the year ending October 31, 1921, was 239,788,000 cubic feet, which was divided between the two rate classifications approximately as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	189,505,000 cu. ft.
Excess " " " " .....	50,283,000 "
Total .....	239,788,000 "

## Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are as follows:

189,505 M cu. ft. at 55¢ per M.....	\$104,228
50,283 " " " " 25¢ " " .....	12,571

Total Gross Gas Revenues.....	\$116,799
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## Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending October 31, 1921, is therefore 299,735,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for, by the Oklahoma Gas & Electric Company at the rate of 25¢ per M

cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be as follows:

249,452 M cu. ft. at 25¢ per M.....	\$62,363
50,283 " " " 20¢ per M.....	10,057

Total..	299,735	\$72,420
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254 Other operating expenses for the year ending October 31, 1921, exclusive of depreciation, amortization and returns amounted to ..... \$35,412

Total operating expenses would under present gate rates therefore be ..... \$107,832

Amount Available for Depreciation, Amortization, and Returns.

There would be available for depreciation, amortization and returns, under present rates \$8,967.

#### B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 68¢ instead of 55¢ per 1,000 cu ft. sold for the first 500,000 cu. ft. per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cu. ft. for all gas received by the company except that portion which equals the amount sold to customers in excess of 500,000 cu. ft. per month, the results are as follows:

##### Gross Revenues:

189,505 M cu. ft. at 68¢ per M.....	\$128,863
50,283 " " " 25¢ " " .....	12,571

Total Gross Gas Revenues .....	\$141,434
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##### Operating Expenses:

###### Cost of Gas:

249,452 M cu. ft. at 35¢ per M.....	\$87,306
50,283 " " " 20¢ " " .....	10,057

Total Cost of Gas .....	97,365
Other Operating Expenses .....	35,412

Total Operating Expenses .....	\$132,777
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Amount Available for Depreciation, Amortization and Returns \$8,657.

## Section II.

## Subsection c.

Based on Conditions for Year Ending November 30, 1921.

## A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the El Reno division during the year ending November 30, 1921, was 238,718,000 cubic feet, which was divided between the two rate classifications approximately as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	188,097,000 cu. ft.
Excess .....	50,631,000 "
Total .....	238,718,000 "

## Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are as follows:

188,097 M cu. ft. at 55¢ per M.....	\$103,453
50,621 " " " 25¢ " " .....	12,654
Total Gross Gas Revenues .....	\$116,107

## Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending November 30, 1921, is therefore 298,398 cubic feet. Under the gate rate order all of this except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for, by the Oklahoma Gas & Electric Company at the rate of 25¢ per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be as follows:

247,777 M cu. ft. at 25¢ per M.....	\$61,944
50,621 " " " 20¢ " " .....	10,124
Total 298,398 .....	\$72,068

Other operating expenses for the year ending November 30, 1921, exclusive of depreciation, amortization and returns amounted to ..... \$35,794  
 Total operating expenses would under present gate rates therefore be ..... \$107,862

256 Amount Available for Depreciation, Amortization, and Return.

There would be available for depreciation, amortization and returns, under present rates \$8,245.

B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 68¢ instead of 55 per 1,000 cu. ft. sold for the first 500,000 cu. ft. per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cu. ft. for all gas received by the company except that portion which equals the amount sold to customers in excess of 500,000 cu. ft. per month, the results are as follows:

Gross Revenues:

188,097 M cu. ft. at 68¢ per M.....	\$127,906
50,621 " " " 25¢ " " .....	12,655
Total Gross Gas Revenues .....	\$140,561

Operating Expenses:

Cost of Gas:

247,777 M cu. ft. at 35¢ per M.....	\$86,722
50,621 " " " 20¢ " " .....	10,124
Total Cost of Gas .....	\$96,846
Other Operating Expenses .....	35,794
Total Operating Expenses .....	\$132,640

Amount Available for Depreciation, Amortization and Returns 7,921.

EDWARD N. STRAIT.

Subscribed and sworn to before me this 8th day of February, A. D. 1922.

JOHN P. RYAN,  
*Notary Public.*

My Commission expires July 10, 1923.

Endorsed: Filed in District Court on February 16, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

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No. 3.

In the District Court of the United States for the Western District of Oklahoma.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and  
Muskogee Gas & Electric Company, a Corporation, Complain-  
ants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL  
Russell, Art. L. Walker, and E. R. Hughes, Constituting the  
Corporation Commission of the State of Oklahoma, and S. P.  
Freeling, Attorney General for the State of Oklahoma, Defend-  
ants.

COUNTY OF COOK,  
*State of Illinois, ss:*

Edward N. Strait, being first duly sworn, on oath deposes and says: I have prepared and sworn to other affidavits in the above entitled matter, wherein I have shown among other things the annual net earnings required by the Oklahoma Gas & Electric Company in its gas business in its Oklahoma City, Enid and El Reno divisions and the amount of net earnings which it would obtain in said divisions under the present schedules of rates, assuming that the volume of business remained the same as for the year ending September 30, October 31, and November 30, 1921, and assuming that the gas be paid for under a gate rate consisting of 25¢ per 1,000 cubic feet for all gas received at the city gates, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for  
258 said portion sold to customers in excess of 500,000 cubic feet per month. I likewise showed the amount of net earnings which it would obtain in said divisions under the present rates assuming that the gas be paid for under a gate rate of 35¢ per 1,000 cubic feet for all gas received at the city gates, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet.

#### Valuation.

I have carefully read the affidavit of Edward D. Uhlendorf, dated January 24, 1922, in the above entitled matter, wherein he certified that in his opinion the fair valuation at the present time of the property of the Muskogee Gas & Electric Company used and useful in the distribution of natural gas in Muskogee, Oklahoma, is not less than \$1,191,723.

## Net Earnings Necessary to Yield Fair Return.

The reports of decisions of the Corporation Commission of Oklahoma indicate that the Corporation Commission has uniformly allowed five per cent (5%) for depreciation and amortization of natural gas distributing properties. This is in line with corresponding allowances made by other public service commissions.

During the year 1921, the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company were compelled to re-finance in large measure, because a large part of their outstanding obligations fell due at that time. I have analyzed the cost of that financing and find that, after taking into account the marketing discounts and expense as well as the interest on the par value of the securities issued, the use of this borrowed capital costs the Oklahoma Gas & Electric Company and the Muskogee  
259 Gas & Electric Company approximately 9.9 per cent per annum. The securities represented by the issues are twenty (20) year bonds and ten (10) year notes and hence the expense thereof is fixed for a long period of time. An allowance of ten (10) per cent for returns, in addition to depreciation and amortization, would afford only a slight margin above the cost of the borrowed capital.

I have ascertained the annual amount of net earnings required to equal 15 per cent for depreciation, amortization and interest on the fair valuation, set forth above, to be \$178,758.

## Net Earnings under Present Rates.

I have analyzed the operating expenses and gas sales of the Muskogee Gas & Electric Company for the years ending September 30, October 31 and November 30, 1921.

I have calculated the cost of gas received at the city gate from the Oklahoma Natural Gas Company under a gate rate of 25¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month, and at a gate rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet.

I have also calculated the cost of gas received at the city gate from the Oklahoma Natural Gas Company under a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet.

I have ascertained that there would be nothing available for depreciation, amortization and returns assuming the same volume of business as for the years ending September 30, October 31, and November 30, 1921, if the present rates to the public and gate rates  
280 paid to the Oklahoma Natural Gas Company should be effective for a year, but on the contrary deficits would result, as shown by the following summary:

## A. Calculations Based on Gate Rate of 25¢ and 20¢.

## Based on Conditions for—

Year ending September 30, 1921.....	[\$6,044
" " October 31, 1921.....	4,156
" " November 30, 1921.....	5,299]*

## B. Calculations Based on Gate Rate of 35¢ and 20¢.

## Based on Conditions for—

Year ending September 30, 1921.....	[\$10,662
" " October 31, 1921.....	7,653
" " November 30, 1921.....	9,316]*

The derivation of these results are set forth in detail below:

## Section I.

## Based on Conditions for Year Ending September 30, 1921.

The present retail rates to the public effective in Muskogee, Oklahoma, comprising the Muskogee division are, as follows:

## A. When the Gate Rate is 25¢ and 20¢ as heretofore stated:

First 500,000 cu. ft. per month at 45¢ net per 1,000 cu. ft.  
Excess " " " " " 25 " " 1,000 " "

## B. When the Gate Rate is 35¢ and 20¢ as heretofore stated:

First 500,000 cu. ft. per month at 58¢ net per 1,000 cu. ft.  
Excess " " " " " 25 " " 1,000 " "

## A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the Muskogee division during the year ending September 30, 1921, was 1,206,245,000 cubic feet, which was divided between the two rate classifications approximately, as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	851,246,000 cu. ft.
Excess " " " " .....	354,999,000 " "
Total .....	1,206,245,000 " "

[\*Red in copy.]

## Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are, as follows:

851,246 M cu. ft. at 45¢ per M.....	\$383,061
354,999 " " " " 25 " " .....	88,750
Total Gross Gas Revenues.....	\$471,811

## 261 Operating Expenses:

The amount of gas lost and unaccounted for in distributing is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending September 30, 1921, is, therefore, 1,507,806,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for by the Oklahoma Gas & Electric Company at the rate of 25¢ per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be, as follows:

1,152,807 M cu. ft. at 25¢ per M.....	\$288,202
354,999 " " " " 20 " " .....	71,000
Total Cost of Gas.....	\$359,202

Other operating expenses for the year ending September 30, 1921, exclusive of depreciation, amortization and returns amounted to..... \$118,653

Total operating expenses would under present gate rates therefore be..... \$477,855

## Amount Available for Depreciation, Amortization, and Returns.

There would be nothing available for depreciation, amortization and returns, under present rates, but a loss of [\$6,044]\*

## B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 58¢ instead of 45¢ per 1,000 cubic feet sold for the first 500,000 cubic feet per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cubic feet for all gas received by the company, except that portion which equals the amount sold to customers in excess of 500,000 cubic feet per month, the results are, as follows:

[\*Red in copy.]

## Gross Revenues:

851,246 M cu. ft. at 58¢ per M.....	\$493,723
354,999 " " " " 25 " ".....	88,750
Total Gross Revenues.....	\$582,473

## Operating Expenses:

## Cost of Gas:

1,152,807 M cu. ft. at 35¢ per M.....	\$403,482
354,999 " " " " 20 " ".....	71,000
Total Cost of Gas.....	\$474,482
Other Operating Expenses.....	118,653
Total Operating Expenses.....	\$593,135

Amount Available for Depreciation, Amortization and Returns:  
[\$10,662.]\*

## Section II.

Based on Conditions for Year Ending October 31, 1921.

## A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the Muskogee division during the year ending October 31, 1921, was 1,158,920,000 cubic feet, which was divided between the two rate classifications approximately, as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	849,228,000 cu. ft.
Excess " " " " ".....	309,692,000 " "
Total .....	1,158,920,000 " "

## Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are, as follows:

849,288 M cu. ft. at 45¢ per M.....	\$382,153
309,692 " " " " 25 " ".....	77,423
Total Gross Revenues.....	\$459,576

## Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city

[\*Red in copy.]

gate to furnish to customers the amount of gas sold during the year ending October 31, 1921, is therefore, 1,448,850,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for by the Oklahoma Gas & Electric Company at the rate of 25¢ per 1,000 cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be, as follows:

1,138,958 M cu. ft. at 25¢ per M.....	\$284,739
309,692 " " " " 20 " ".....	61,938

Total Cost of Gas.....	\$346,677
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Other operating expenses for the year ending October 31, 1921, exclusive of depreciation, amortization and returns, amounted to.....	\$117,055
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Total operating expenses would under present gate rates therefore be .....	\$463,732
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Amount Available for Depreciation, Amortization, and Returns.

There would be nothing available for depreciation, amortization and returns, under present rates, but a loss of [\$4,156.]\*

#### B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 58¢ instead of 45¢ per 1,000 cubic feet sold for the first 500,000 cubic feet per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cubic feet for all gas received by the company, except that portion which equals the amount sold to customers in excess of 500,000 cubic feet per month, the results are, as follows:

##### Gross Revenues:

849,228 M cu. ft. at 58¢ per M.....	\$492,552
309,692 " " " " 25 " ".....	77,423

Total Gross Revenues.....	\$569,975
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## Operating Expenses:

## Cost of Gas:

1,138,958 M cu. ft. at 35¢ per M.....	\$398,635
309,692 " " " " 20 " ".....	61,938

Total Cost of Gas..... \$460,573

Other Operating Expenses..... 117,055

Total Operating Expenses..... \$577,628

Amount Available for Depreciation, Amortization and Returns:  
\$7,653.

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## Section III.

Based on Conditions for Year Ending November 30, 1921.

## A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the Muskogee Division during the year ending November 30, 1921, was 1,186,246,000 cubic feet, which was divided between the two rate classifications approximately, as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	854,655,000 cu. ft.
Excess " " " " ".....	331,591,000 " "
Total .....	1,186,246,000 " "

## Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are, as follows:

854,655 M cu. ft. @ 45¢ per M.....	\$384,595
331,591 " " " " 25 " ".....	82,898

Total Gross Revenues..... \$467,493

## Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending November 30, 1921, is therefore 1,482,808,000 cubic feet. Under the gate rate order, all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for by the Oklahoma Gas & Electric Company at the rate of 25¢ per M cubic feet. The amount delivered to customers in excess

of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be, as follows:

1,151,217 M cu. ft. at 25¢ per M.....	\$287,804
331,591 " " " " 20 " ".....	66,318

Total Cost of Gas.....	\$354,122
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Other operating expenses for the year ending November 30, 1921, exclusive of depreciation, amortization and returns amounted to.....	\$118,670
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Total operating expenses would under present gate rates therefore be.....	\$472,792
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265 Amount Available for Depreciation, Amortization, and Returns.

There would be nothing available for depreciation, amortization and returns, under present rates but a loss of [\$5,299.]\*

#### B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 58¢ instead of 45¢ per 1,000 cubic feet sold for the first 500,000 cubic feet per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cubic feet for all gas received by the company, except that portion which equals the amount sold to customers in excess of 500,000 cubic feet per month, the results are, as follows:

##### Gross Revenues:

854,655 M cu. ft. at 58¢ per M.....	\$495,700
331,591 " " " " 25 " ".....	82,898

Total Gross Revenues.....	\$578,598
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##### Operating Expenses:

###### Cost of Gas:

1,151,217 M cu. ft. at 35¢ per M.....	\$402,926
331,591 " " " " 20 " ".....	66,318

Total Cost of Gas.....	\$469,244
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Other Operating Expenses.....	118,670
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Total Operating Expenses.....	\$587,914
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[\*Red in copy.]

Amount Available for Depreciation, Amortization and Returns:  
[9,316.]\*

EDWARD N. STRAIT.

Subscribed and Sworn to before me this 8th day of February,  
1922, A. D.

JOHN P. RYAN,  
*Notary Public.*

My Commission expires July 11, 1923.

Endorsed: Filed in District Court February 16, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

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No. 4.

In the District Court of the United States for the Western District of  
Oklahoma.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE Gas & Electric Company, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

COUNTY OF COOK,  
*State of Illinois, ss:*

Edward N. Strait, being first duly sworn, on oath deposes and says: I am thirty-six (36) years of age and a resident of the village of Oak Park, State of Illinois, manager of the Rate Department of the Byllesby Engineering and Management Corporation, in the City of Chicago, State of Illinois, and an engineer and rate expert by profession. I obtained my engineering education in the University of Wisconsin, graduating from the College of Engineering thereof in 1906. I received the degree of electrical engineer from the University of Wisconsin in 1912. I am an associate member of the American Institute of Electrical Engineers and of the Illuminating Engineering Society and a member of the Western Society of Engineers. During 1906 and 1907, I was employed in the manufacturing and testing of electrical apparatus. From 1907 to 1916, inclusive, I was a member of the staff of the Railroad Commission  
267 of Wisconsin engaged as an expert in valuation, inspection of service and investigation of public utility rates and related matters for the Railroad Commission of Wisconsin. Since 1916, I have been, and at present am manager of the Rate Department of the Byllesby Engineering and Management Corporation.

[\*Red in copy.]

## Valuation.

I have carefully read the affidavit of Edward D. Uhlendorf, dated January 24, 1922, in the above entitled matter, wherein he certified that in his opinion the fair valuation at the present time of the Oklahoma Gas & Electric Company, and the Muskogee Gas & Electric Company used and useful in the distribution of natural gas in the cities of Oklahoma City, Muskogee, Enid and El Reno and the towns of Bethany, Britton and Yukon is not less than the following amounts:

Oklahoma City, Bethany, Britton and Yukon.....	\$2,660,583
Muskogee .....	1,191,723
Enid .....	626,766
El Reno.....	354,146

## Net Earnings Necessary to Yield Fair Returns.

The reports of decisions of the Corporation Commission of Oklahoma indicate that the Corporation Commission has uniformly allowed five per cent (5%) for depreciation and amortization of natural gas distributing properties. This is in line with corresponding allowances made by other public service commissions.

During the year 1921, the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company were compelled to refinance in large measure, because a large part of their outstanding obligations fell due at that time. I have analyzed the cost of that financing and find that, after taking into account the marketing discounts and expense as well as the interest on the par value of the securities issued, the use of this borrowed capital costs the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company approximately 9.9 per cent per annum. The securities represented by the issues are twenty (20) year bonds and ten (10) year notes and hence the expense thereof is fixed for a long period of time. An allowance of ten (10) per cent for returns, in addition to depreciation, would afford only a slight margin above the cost of the borrowed capital.

I have ascertained the amount of net earnings required to equal 15 per cent for depreciation, amortization and interest on the fair valuation of the property, set forth above, to be as follows:

Oklahoma City, Bethany, Britton and Yukon.....	\$399,087
Muskogee .....	178,758
Enid .....	94,015
El Reno.....	53,122

## Rates to Public Required to Yield Fair Returns.

I have analyzed the operating expenses and gas sales of the Gas Department of the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company, in their Oklahoma City, Muskogee,

Enid and El Reno divisions, for the years ending September 30, October 31, and November 30, 1921.

I have calculated the cost of gas received at the city gates from the Oklahoma Natural Gas Company under a gate rate of 25¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month for which amount the gate rate is 20¢ per 1,000 cubic feet.

I have also calculated the cost of gas received at the city gates from the Oklahoma Natural Gas Company under a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month, for which I have calculated the cost at the city gates of 20¢ per 1,000 cubic feet.

269 I have calculated the rates to the public, which would be necessary to yield net earnings equal to 15 per cent on the fair valuation as set forth above, after meeting the cost of gas, as explained above, and other actual operating expenses, assuming that the volume of gas sales remains the same as for the years ending September 30, October 31, and November 30, 1921.

The results of my calculations show the following necessary rates for the first 500,000 cubic feet used per customer:

On the Basis of Conditions for Year Ending September 30, 1921.

	Under gate rate of—	
	25¢ and 20¢.	35¢ and 20¢.
Oklahoma City Division.....	58.7¢	72.2¢
Muskogee Division.....	66.5	79.2
Enid Division.....	63.5	77.2
El Reno Division.....	77.2	90.4

On the Basis of Conditions for Year Ending October 31, 1921.

	Under gate rate of—	
	25¢ and 20¢.	35¢ and 20¢.
Oklahoma City Division.....	58.2¢	71.5¢
Muskogee Division.....	66.5	80.0
Enid Division.....	63.6	76.9
El Reno Division.....	78.3	91.5

On the Basis of Conditions for Year Ending November 30, 1921.

	Under gate rate of—	
	25¢ and 20¢.	35¢ and 20¢.
Oklahoma City Division.....	58.2¢	71.6¢
Muskogee Division.....	66.5	80.0
Enid Division.....	64.5	77.5
El Reno Division.....	78.9	92.0

The details of the calculations upon which these results were obtained are set forth below by divisions, as follows:

- Section I—Oklahoma City Division.  
 " II—Muskogee Division.  
 " III—Enid Division.  
 " IV—El Reno Division.

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## Section I.

## Oklahoma City Division.

(Including Oklahoma City and Towns of Bethany, Britton and Yukon.)

## Section I—Subsection a.

Based on Conditions for Year Ending September 30, 1921.

The total amount of gas sold in the Oklahoma City Division during the year ending September 30, 1921, was 3,349,678 cubic feet which was divided between the two rate classifications approximately, as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month .....	2,356,045,000 Cu. ft.
Excess " " " " .....	993,633,000 " "
Total .....	3,349,678,000

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending September 30, 1921, is therefore 4,187,098,000 cubic feet.

A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 cubic feet.

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained, would be, as follows:

3,193,465 M cu. ft. at 25¢ per M .....	\$793,366
993,633 " " " " 20 " " .....	198,727
Total Cost of Gas .....	\$997,093

Other operating expenses for the year ending September 30, 1921, exclusive of depreciation, amortization and returns amounted to .....

\$235,971

Total operating expenses including cost of gas would therefore be .....

\$1,233,064

Fifteen per cent for depreciation, amortization and returns as heretofore shown amounts to \$399,087.

271 The total annual gross revenues required are, therefore, \$1,632,151, made up, as follows:

Cost of Gas .....	\$997,093
Other Operating Expenses .....	235,971
Depreciation, Amortization and Returns .....	399,087

Total Gross Revenues Required .....	\$1,632,151
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A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending September 30, 1921, is as follows:

993,633 M cu. ft. at 25¢ per M .....	\$248,408
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After deducting this amount from the total gross revenues required, there remains \$1,383,743 to be met by sales classified as the first 500,000 cubic feet per month. As heretofore shown, the total sales comprising the first 500,000 cubic feet per month of the consumers' consumption amounted to approximately 2,356,045 M. cubic feet, which divided into the total gross revenues (\$1,383,743) required therefrom establishes a necessary rate of 58.7¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

#### B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required for the same volume of business as for the year ending September 30, 1921, would be \$1,703,090 and the rate required for the first 500,000 cubic feet per month would be 72.2¢ per 1,000 cubic feet, determined, as follows:

## 272 Cost of Gas:

3,193,465 M cu. ft. at 35¢ per M .....	\$1,117,713
993,633 " " " " 20 " " .....	198,727
Total Cost of Gas .....	\$1,316,440
Other Operating Expenses .....	235,971
Total Operating Expenses .....	\$1,552,411
Net Earnings Required .....	399,087
Total Gross Revenue Required .....	\$1,951,498
Deduct Revenue obtainable from gas in excess of 500,000 cu. ft. per mp. 993,633 M cu. ft. at 25¢ per M .....	248,408
Remaining Revenue required from first 500,000 cu. ft. per month .....	\$1,703,090
Sales Classified as first 500,000 cu. ft. per month....	2,356,045 M
Average rate required for first 500,000 cu. ft. per month .....	72.2¢

## Section I—Subsection b.

Based on Conditions for Year Ending October 31, 1921.

The total amount of gas sold in the Oklahoma City division during the year ending October 31, 1921, was 3,151,543,000 cubic feet, which was divided between the two rate classifications approximately, as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month .....	2,378,941,000 cu. ft.
Excess " " " " .....	772,602,000 " "
Total .....	3,151,543,000 " "

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending October 31, 1921, is, therefore, 3,939,430,000 cubic feet.

A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained, would be, as follows:

3,166,828 M cu. ft. at 25¢ per M .....	\$791,707
772,602 " " " " 20 " " .....	154,520

Total Cost of Gas .....	\$946,227
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273 Other operating expenses for the year ending  
October 31, 1921, exclusive of depreciation,  
amortization and returns amounted to..... \$232,291

Total Operating expenses including cost of gas would therefore be .....	\$1,178,518
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Fifteen per cent for depreciation, amortization and returns as heretofore shown, amounts to \$399,087.

The total annual gross revenues required are, therefore, \$1,577,605 made up, as follows:

Cost of Gas.....	\$946,227
Other Operating Expenses.....	232,291
Depreciation, Amortization and Returns.....	399,087

Total Gross Revenues Required.....	\$1,577,605
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A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending October 31, 1921, is, as follows:

772,602 M cu. ft. at 25¢ per M.....	\$193,150
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After deducting this amount from the total gross revenues required, there remains \$1,384,455 to be met by sales classified as the first 500,000 cubic feet per month. As heretofore shown, the total sales comprising the first 500,000 cubic feet per month of the consumers' consumption amounted to approximately 2,378,941 M cubic feet, which divided into the total gross revenues (\$1,384,455) required therefrom establishes a necessary rate of 58.2¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

#### B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for  
274 all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required

for the same volume of business as for the year ending October 31, 1921, would be \$1,701,138 and the rate required for the first 500,000 cubic feet per month would be 71.5¢ per 1,000 cubic feet, determined as follows:

Cost of Gas:		
3,166,828 M cu. ft. at 35¢ per M.....	\$1,108,390	
772,602 " " " " 20 " ".....	154,520	
Total Cost of Gas.....	\$1,262,910	
Other Operating Expenses.....	232,291	
Total Operating Expenses.....	\$1,495,201	
Net Earnings Required.....	399,087	
Total Gross Revenues Required.....	\$1,894,288	
Deduct Revenue obtainable from gas in excess of \$500,- 000 cu. ft. per month, 772,602 M cu. ft. at 25¢ per M.	193,150	
Remaining Revenue required from first 500,000 cu. ft. per month.....	\$1,701,138	
Sales classified as first 500,000 cu. ft. per month 2,378,941 M.		
Average rate required for first 500,000 cu. ft. per month 71.5¢.		

#### Section I—Subsection c.

The total amount of gas sold in the Oklahoma City division during the year ending November 30, 1921, was 3,196,419,000 cubic feet which was divided between the two rate classifications approximately, as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	2,387,607,000 cu. ft.
Excess " " " ".....	808,812,000 " "
Total .....	3,196,419,000 " "

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the 275 year ending November 30, 1921, is therefore 3,995,524,000 cubic feet.

#### A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained, would be, as follows:

3,186,712 M cu. ft at 25¢ per M.....	\$796,678
808,812 " " " " 20 " ".....	161,672
Total Cost of Gas.....	\$958,440
Other operating expenses for the year ending November 30, 1921, exclusive of depreciation, amortization and returns amounted to.....	\$235,370
Total operating expenses including cost of gas would, therefore, be.....	\$1,193,810

Fifteen per cent for depreciation, amortization and returns, as heretofore shown, amounts to \$399,087.

The total annual gross revenues required are, therefore, \$1,592,897 made up, as follows:

Cost of Gas.....	\$958,440
Other Operating Expenses.....	235,370
Depreciation, Amortization and Returns.....	399,087
Total Gross Revenue Required.....	\$1,592,897

A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending November 30, 1921, is, as follows:

808,812 M cu. ft. at 25¢ per M..... \$202,203

After deducting this amount from the total gross revenues required, there remains \$1,390,694 to be met by sales classified as the first 500,000 cubic feet per month. As heretofore shown, the total sales comprising the first 500,000 cubic feet per month of the consumers' consumption amounted to approximately 2,387,607 276 M cubic feet, which divided into the total gross revenues (\$1,390,694) required therefrom establishes a necessary rate of 58.2¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

#### B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required for the same volume of business as for the year ending November 30, 1921, would be

\$1,709,365 and the rate required for the first 500,000 cubic feet per month would be 71.6¢ per 1,000 cubic feet, determined, as follows:

Cost of Gas:

3,186,712 M cu. ft. at 35¢ per M.....	\$1,115,349
808,812 " " " " 20 " ".....	161,762
Total Cost of Gas.....	\$1,277,111
Other Operating Expenses.....	235,370
Total Operating Expenses.....	\$1,512,481
Net Earnings Required.....	399,087
Total Gross Revenues Required.....	\$1,911,568
Deduct Revenue obtainable from gas in excess of 500,000 cu. ft. per month 808,812 M cu. ft at 25¢ per M.....	202,203
Remaining Revenue required from first 500,000 cu. ft. per month.....	\$1,709,365
Sales classified as first 500,000 cu. ft. per month \$387,607 M.	
Average rate required for first 500,000 cu. ft. per month 71.6¢.	

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Section II.

Muskogee Division.

Section II—Subsection a.

Based on Conditions for Year Ending September 30, 1921.

The total amount of gas sold in the Muskogee Division during the year ending September 30, 1921, was 1,206,245,000 cubic feet which was divided between the two rate classifications approximately, as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	851,246,000 cu. ft.
Excess " " " ".....	354,999,000 " "
Total.....	1,206,245,000 " "

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending September 30, 1921, is therefore 1,507,806,000 cubic feet.

A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained, would be, as follows:

1,152,807 M cu. ft. at 25¢ per M.....	\$288,202
354,999 " " " " 20 " " .....	71,000
<b>Total Cost of Gas.....</b>	<b>\$359,202</b>
Other operating expenses for the year ending September 30, 1921, exclusive of depreciation, amortization and returns amounted to.....	118,653
<b>Total operating expenses including cost of gas would therefore be.....</b>	<b>\$477,855</b>

Fifteen per cent for depreciation, amortization and returns, as heretofore shown, amounts to \$178,758.

The total annual gross revenues required are, therefore, \$656,613 made up, as follows:

278 Cost of Gas.....	\$359,202
Other Operating Expenses.....	118,653
Depreciation, Amortization and Returns.....	178,758
<b>Total Gross Revenues Required.....</b>	<b>\$656,613</b>

A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending September 30, 1921, is, as follows:

354,999 M cu. ft. at 25¢ per M.....	\$88,750
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After deducting this amount from the total gross revenues required there remains \$567,863 to be met by sales classified as the first 500,000 cubic feet per month. As heretofore shown, the total sales comprising the first 500,000 cubic feet per month of the consumers' consumption amounted to approximately 851,246 M cubic feet, which divided into the total gross revenues (\$567,813) required therefrom establishes a necessary rate of 66.5¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

### B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required for the same volume of business as for the year ending September 3, 1921, would be \$683,143 and the rate required for the first 500,000 cubic feet per month would be 79.2¢ per 1,000 cubic feet, determined as follows:

#### 279 Cost of Gas:

1,152,807 M cu. ft. at 35¢ per M.....	\$403,482
354,999 " " " " 20 .....	71,000
Total Cost of Gas.....	\$474,482
Other Operating Expenses.....	118,653
Total Operating Expenses.....	\$593,135
Net Earnings Required .....	178,758
Total Gross Revenues Required.....	\$771,893
Deduct revenue obtainable from gas in excess of 500,000 cu. ft. per month 354,999 M cu. ft. at 25¢ per M...	88,750
Remaining Revenue required from first 500,000 cu. ft. per month .....	\$683,143
Sales classified as first 500,000 cu. ft. per month, 851,246 M.	
Average rate required for first 500,000 cu. ft. per month, 79.2¢.	

#### Section II—Subsection b.

Based on Conditions for Year Ending October 31, 1921.

The total amount of gas sold in the Muskogee Division during the year ending October 31, 1921, was 1,158,920,000 cubic feet, which was divided between the two rate classifications approximately, as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	849,228,000 cu. ft.
Excess " " " " .....	309,692,000 " "
Total.....	1,158,920,000 " "

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending October 31, 1921, is therefore, 1,448,650,000 cubic feet.

A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained, would be, as follows:

1,138,958 M cu. ft. at 25¢ per M.....	\$284,739
309,692 " " " " 20 " " .....	61,938

Total Cost of Gas.....	\$346,677
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Other operating expenses for the year ending October 31, 1921, exclusive of depreciation, amortization and returns amounted to .....	117,055
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Total operating expenses including cost of gas would, therefore, be .....	\$463,732
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Fifteen per cent for depreciation, amortization and returns, as heretofore shown, amounts to \$178,758.

The total annual gross revenues required are, therefore, \$642,490 made up, as follows:

Cost of Gas .....	\$346,677
Other Operating Expenses .....	117,055
Depreciation, Amortization and Returns.....	178,758

Total Gross Revenues Required.....	\$642,490
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A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without a serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending October 31, 1921, is as follows:

309,692 M cu. ft. at 25¢ per M.....	\$77,423
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After deducting this amount from the total gross revenues required, there remains \$565,067 to be met by sales classified as the first 500,000 cubic feet per month. As heretofore shown, the total sales comprising the first 500,000 cubic feet per month of the consumers' consumption amounted to approximately 849,228 M cubic feet, which divided into the total gross revenues (\$565,067) required therefrom establishes a necessary rate of 66.5¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

281 B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required for the same volume of business as for the year ending October 31, 1921, would be \$678,963 and the rate required for the first 500,000 cubic feet per month would be 80.0¢ per 1,000 cubic feet, determined, as follows:

Cost of Gas:

1,138,958 M cu. ft. at 35¢ per M.....	\$398,635
309,692 " " " " 20 " ".....	61,938

Total Cost of Gas.....	\$460,573
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Other Operating Expenses.....	117,055
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Total Operating Expenses.....	\$577,628
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Net Earnings Required.....	178,758
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Total Gross Revenues Required.....	\$756,386
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Deduct Revenue obtainable from gas in excess of 500,000 cu. ft. per month 309,692 M cu. ft. at 25¢ per M.....	77,423
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Remaining Revenue required from first 500,000 cu. ft. per month .....	\$678,963
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Sales classified as first 500,000 cu. ft. per month, 849,228 M.  
Average rate required for first 500,000 cu. ft. per month, 80.0¢.

Section II—Subsection c.

Based on Conditions for Year Ending November 30, 1921.

The total amount of gas sold in the Muskogee Division during the year ending November 30, 1921, was 1,186,246,000 cubic feet, which was divided between the two rate classifications approximately, as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	854,655,000 cu. ft.
Excess " " " " .....	331,591,000 " "
Total .....	1,186,246,000 " "

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at 282 the city gate to furnish to customers the amount of gas sold during the year ending November 30, 1921, is therefore 1,482,808,000 cubic feet.

A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 cubic feet.

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained, would be as follows:

1,151,217 M cu. ft. at 25¢ per M.....	\$287,804
331,591 " " " 20¢ " ".....	66,318

Total Cost of Gas.....	\$354,122
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Other operating expenses for the year ending November 30, 1921, exclusive of depreciation, amortization and returns amounted to.....	118,670
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Total operating expenses including cost of Gas would therefore be .....	\$472,792
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Fifteen per cent for depreciation, amortization and returns as heretofore shown amounts to \$178,758.

The total annual gross revenues required are therefore \$651,550 made up as follows:

Cost of Gas.....	\$354,122
Other Operating Expenses.....	118,670
Depreciation, Amortization and Returns.....	178,758

Total Gross Revenues Required.....	\$651,550
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A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending November 30, 1921, is as follows:

331,591 M cu. ft. at 25¢ per M.....	\$82,898
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After deducting this amount from the total gross revenues required, there remains \$568,652 to be met by sales classified as the first 500,000 cubic feet per month. As heretofore shown, the total sales comprising the first 500,000 cubic feet per month 283 of the consumers' consumption amounted to approximately 854,855 M cubic feet, which divided into the total gross reve-

nues (\$568,652) required therefrom establishes a necessary rate of 86.5¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

**B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.**

If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required for the same volume of business as for the year ending November 30, 1921, would be \$683,774 and the rate required for the first 500,000 cubic feet per month would be 80.0¢ per 1,000 cubic feet, determined as follows:

**Cost of Gas:**

1,151,217 M cu. ft. at 35¢ per M.....	\$402,926
331,591 " " " 20¢ " " .....	66,318
<b>Total Cost of Gas.....</b>	<b>\$469,244</b>
<b>Other Operating Expenses.....</b>	<b>118,670</b>
<b>Total Operating Expenses.....</b>	<b>\$587,914</b>
<b>Net Earnings Required.....</b>	<b>178,758</b>
<b>Total Gross Revenues Required.....</b>	<b>\$766,672</b>
Deduct Revenue obtainable from gas in excess of 500,000	
cu. ft. per month 331,591 M cu. ft. at 25¢ per M.....	82,898
<b>Remaining Revenue required from first 500,000</b>	
<b>cu. ft. per month.....</b>	<b>\$683,774</b>
Sales classified as first 500,000 cu. ft. per month 854,655 M.	
Average rate required for first 500,000 cu. ft. per month 80.0¢.	

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**Section III.**

**Enid Division.**

**Section III—Subsection a.**

**Based on Conditions for Year Ending September 30, 1921.**

The total amount of gas sold in the Enid Division during the year ending September 30, 1921, was 670,665,000 cubic feet which was divided between the two rate classifications approximately as follows:

	Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....		476,964,000 cu. ft.
Excess " " " .....		193,701,000 "
Total .....		670,665,000 "

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending September 30, 1921, is therefore 838,331,000 cubic feet.

**A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.**

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained would be as follows:

644,630 M cu. ft. at 25¢ per M.....	\$161,158
193,701 " " " 20¢ " " .....	38,740

Total Cost of Gas.....	199,898
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Other operating expenses for the year ending September 30, 1921 exclusive of depreciation, amortization and returns amounted to.....	58,261
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Total operating expenses including cost of gas would therefore be.....	\$258,159
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Fifteen per cent for depreciation, amortization and returns as heretofore shown amounts to \$94,015.

285 The total annual gross revenues required are therefore \$352,174 made up as follows:

Cost of Gas.....	\$199,898
Other Operating Expenses.....	58,261
Depreciation, Amortization and Returns.....	94,015

Total Gross Revenues Required.....	\$352,174
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A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending September 30, 1921, is as follows:

193,701 M cu. ft. at 25¢ per M.....	\$48,425
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After deducting this amount from the total gross revenues required, there remains \$303,749 to be met by sales classified as the first 500,000 cubic feet per month. As heretofore shown, the total sales comprising the first 500,000 cubic feet per month of the consumers' consumption amounted to approximately 476,964 M cubic feet, which divided into the total gross revenues (\$903,749) required therefrom establishes a necessary rate of 63.5¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

**B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.**

If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required for the same volume of business as for the year ending September 30, 1921, would be \$368,211 and the rate required for the first 500,000 cubic feet per month would be 77.2¢ per 1,000 cubic feet, determined as follows:

**286 Cost of Gas:**

644,360 M cu. ft. at 35¢ per M.....	\$225,620
193,701 " " " 20¢ " ".....	38,740
<b>Total Cost of Gas.....</b>	<b>\$264,360</b>
<b>Other Operating Expenses.....</b>	<b>58,261</b>
<b>Total Operating Expenses.....</b>	<b>\$322,621</b>
<b>Net Earnings Required.....</b>	<b>94,015</b>
<b>Total Gross Revenues Required.....</b>	<b>\$416,636</b>
Deduct Revenue obtainable from gas in excess of 500,000 cu. ft. per month 193,701 M cu. ft. at 25¢ per M.....	48,425
<b>Remaining Revenue required from first 500,000 cu. ft. per month.....</b>	<b>\$368,211</b>
Sales classified as first 500,000 cu. ft. 476,964 M per month.	
Average rate required for first 500,000 cu. ft. per month 77.2¢.	

**Section III—Subsection b.**

**Based on Conditions for Year Ending October 31, 1921.**

The total amount of gas sold in the Enid Division during the year ending October 31, 1921, was 616,492,000 cubic feet which was divided between the two rate classifications approximately as follows:

	Classification.	Amount of gas sold.
First 500,000	cu. ft. per month.....	476,289,000 cu. ft.
Excess	" " " .....	140,203,000 "
Total .....		616,492,000 "

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending October 31, 1921, is therefore 770,615,000 cubic feet.

A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained, would be as follows:

630,412 M cu. ft. at 25¢ per M. ....	\$157,603
140,203 " " " 20¢ " " .....	28,041
Total Cost of Gas.....	\$185,644

287 Other operating expenses for the year ending October 31, 1921, exclusive of depreciation, amortization and returns amounted to.....	58,487
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Total operating expenses including cost of gas would therefore be.....	\$244,131
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Fifteen per cent for depreciation, amortization and returns as heretofore shown amounts to \$94,015.

The total annual gross revenues required are therefore \$338,146 made up as follows:

Cost of Gas.....	\$185,644
Other Operating Expenses.....	58,487
Depreciation, Amortization and Returns.....	94,915
Total Gross Revenues Required.....	\$338,146

A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending October 31, 1921, is as follows:

140,203 M cu. ft. at 25¢ per M. ....	\$35,051
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After deducting this amount from the total gross revenues required, there remains \$303,095 to be met by sales classified as the first 500,000 cubic feet per month. As heretofore shown, the total

sales comprising the first 500,000 cubic feet per month of the consumers' consumption amounted to approximately 476,289 M cubic feet, which divided into the total gross revenues (\$303,095) required therefrom establishes a necessary rate of 63.6¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

**B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.**

288 If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required for the same volume of business as for the year ending October 31, 1921, would be \$366,136 and the rate required for the first 500,000 cubic feet per month would be 76.9¢ per 1,000 cubic feet, determined as follows:

**Cost of Gas:**

630,412 M cu. ft. at 35¢ per M.....	\$220,644
140,203 " " " 20¢ " ".....	28,041
<b>Total Cost of Gas.....</b>	<b>248,685</b>
<b>Other Operating Expenses.....</b>	<b>58,487</b>
<b>Total Operating Expenses.....</b>	<b>\$307,172</b>
<b>Net Earnings Required.....</b>	<b>94,015</b>
<b>Total Gross Revenues Required.....</b>	<b>\$401,187</b>
Deduct Revenue obtainable from gas in excess of 500,000 cu. ft. per month 140,203 M cu. ft. at 25¢ per M.....	35,051
<b>Remaining Revenue required from first 500,000 cu. ft. per month.....</b>	<b>\$366,136</b>
Sales classified as first 500,000 cu. ft. per month 476,289 M.	
Average rate required for first 500,000 cu. ft. per month 76.9¢.	

**Section III—Subsection c.**

**Based on Conditions for Year Ending November 30, 1921.**

The total amount of gas sold in the Enid Division during the year ending November 30, 1921, was 568,399,000 cubic feet which was divided between the two rate classifications approximately as follows:

	Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....		462,573,000 cu. ft.
Excess " " " " .....		105,826,000 "
		<hr/> 568,399,000 "

289 The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending November 30, 1921, is therefore 710,499,000 cubic feet.

A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained, would be as follows:

604,673 M cu. ft. at 25¢ per M.....	\$151,165
105,826 " " " " 20 " " .....	21,165

Total Cost of Gas.....	\$172,333
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Other operating expenses for the year ending November 30, 1921, exclusive of depreciation, amortization and returns amounted to .....	58,290
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Total operating expenses including cost of gas would therefore be.....	\$230,623
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Fifteen per cent for depreciation, amortization and returns as heretofore shown amounts to \$94,015.

The total annual gross revenues required are therefore \$324,638 made up as follows:

Cost of Gas.....	\$172,333
Other Operating Expenses.....	58,290
Depreciation, Amortization and returns.....	94,015

Total Gross Revenues Required.....	\$324,638
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A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending November 30, 1921, is as follows:

105,826 M cu. ft. at 25¢ per M.....	\$26,456
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After deducting this amount from the total gross revenues required, there remains \$298,192 to be met by sales classified as the first 500,000 cubic feet per month. As heretofore shown, the total sales comprising the first 500,000 cubic feet per month of the consumers' consumption amounted to approximately 462,573 M cubic feet, which divided into the total gross revenues (\$298,192) required therefrom establishes a necessary rate of 64.5¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

**B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.**

If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which it sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required for the same volume of business as for the year ending November 30, 1921, would be \$358,560 and the rate required for the first 500,000 cubic feet per month would be 77.5¢ per 1,000 cubic feet, determined as follows:

**Cost of Gas:**

604,673 M cu. ft. at 35¢ per M.....	\$211,636
105,826 " " " 20 " ".....	21,165
<b>Total Cost of Gas.....</b>	<b>\$232,801</b>
<b>Other Operating Expenses.....</b>	<b>58,290</b>
<b>Total Operating Expenses.....</b>	<b>\$291,091</b>
<b>Net Earnings Required.....</b>	<b>94,015</b>
<b>Total Gross Revenues Required.....</b>	<b>\$385,106</b>
Deduct revenue obtainable from gas in excess of 500,000 cu. ft. per month, 105,826 M cu. ft. at 25¢ per M....	26,456
<b>Remaining Revenue required from first 500,000 cu. ft. per month.....</b>	<b>\$358,650</b>
Sales classified as first 500,000 cu. ft. per month, 462,573 M.	
Average rate required for first 500,000 cu. ft. per month, 77.5¢.	

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## Section IV.

## El Reno Division.

## Section IV—Subsection a.

Based on Conditions for Year Ending September 30, 1921.

The total amount of gas sold in the El Reno Division during the year ending September 30, 1921, was 253,489,000 cubic feet which was divided between the two rate classifications approximately as follows:

	Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....		193,228,000 cu. ft.
Excess " " " .....		60,261,000 "
Total .....		253,489,000 "

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending September 30, 1921, is therefore 316,861,000 cubic feet.

A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained, would be as follows:

256,600 M cu. ft. at 25¢ per M.....	\$64,150
60,261 " " " 20 " " .....	12,052
Total Cost of Gas.....	\$76,202
Other operating expenses for the year ending September 30, 1921, exclusive of depreciation, amortization and returns amounted to.....	34,877
Total operating expenses including cost of gas would therefore be.....	\$111,079

Fifteen per cent for depreciation, amortization and returns as heretofore shown amounts to \$53,122.

The total annual gross revenues required are therefore \$164,201 made up as follows:

292 Cost of Gas.....	\$76,202
Other Operating Expenses.....	34,877
Depreciation, Amortization and Returns.....	53,122
Total Gross Revenues Required.....	\$164,201

A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending September 30, 1921, is as follows:

60,261 M cu. ft. at 25¢ per M.....	\$15,065
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After deducting this amount from the total gross revenues required, there remains \$149,136 to be met by sales classified as the first 500,000 cubic feet per month. As heretofore shown, the total sales comprising the first 500,000 cubic feet per month of the consumers' consumption amounted to approximately 193,228 M cubic feet, which divided into the total gross revenues (\$149,136) required therefrom establishes a necessary rate of 77.2¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

#### B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required for the same volume of business as for the year ending September 30, 1921, would be \$174,796 and the rate required for the first 500,000 cubic feet per month would be 90.4¢ per 1,000 cubic feet, determined as follows:

##### 293 Cost of Gas:

256,600 M cu. ft. at 35¢ per M.....	\$89,810
60,261 " " " " 20¢ " ".....	12,052
Total Cost of Gas.....	101,862
Other Operating Expenses.....	34,877
Total Operating Expenses.....	\$136,739
Net Earnings Required.....	53,122
Total Gross Revenues Required.....	\$189,861
Deduct Revenue obtainable from gas in excess of 500,000 cu. ft. per month 60,261 M cu. ft. at 25¢ per M.....	15,065
Remaining Revenue required from first 500,000 cu. ft. per month.....	174,796

Sales classified as first 500,000 cu. ft. per month 193,228 M.  
Average rate required for first 500,000 cu. ft. per month 90.4¢.

#### Section IV—Subsection b.

Based on Conditions for Year Ending October 31, 1921.

The total amount of gas sold in the El Reno Division during the year ending October 31, 1921, was 239,788,000 cubic feet which was divided between the two rate classifications approximately as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	189,505,000 cu. ft.
Excess " " " " .....	50,283,000 "
Total .....	239,788,000 "

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending October 31, 1921, is therefore 299,735,000 cubic feet.

#### A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained, would be as follows:

294	249,452 M cu. ft. at 25¢ per M.....	\$62,363
	50,283 " " " " 20¢ " " .....	10,057
	Total Cost of Gas.....	\$72,420

Other operating expenses for the year ending October 31, 1921, exclusive of depreciation, amortization and returns amounted to ..... 35,412

Total operating expenses including cost of gas would therefore be..... \$107,832

Fifteen per cent for depreciation, amortization and returns as heretofore shown amounts to \$53,122.

The total annual gross revenues required are therefore \$160,954 made up as follows:

Cost of Gas.....	\$72,420
Other Operating Expenses.....	35,412
Depreciation, Amortization and Returns.....	53,122
Total Gross Revenues Required.....	\$160,954

A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending October 31, 1921, is as follows:

50,283 M cu. ft. at 25¢ per M. .... \$12,571

After deducting this amount from the total gross revenues required, there remains \$148,383 to be met by sales classified as the first 500,000 cubic feet per month. As heretofore shown, the total sales comprising the first 500,000 cubic feet per month of the consumers' consumption amounted to approximately 139,505 M cubic feet, which divided into the total gross revenue (\$148,383) required therefrom establishes a necessary rate of 78.3¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

295 B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required for the same volume of business as for the year ending October 31, 1921, would be \$173,328 and the rate required for the first 500,000 cubic feet per month would be 91.5¢ per 1,000 cubic feet, determined as follows:

Cost of Gas:

249,452 M cu. ft. at 35¢ per M. ....	\$87,308
50,283 " " " " 20 " " .....	10,057
Total Cost of Gas. ....	<u>\$97,365</u>
Other Operating Expenses. ....	35,412
Total Operating Expenses. ....	<u>\$132,777</u>
Net Earnings Required. ....	53,122
Total Gross Revenues Required. ....	<u>\$185,899</u>
Deduct Revenue obtainable from gas in excess of 500,000 cu. ft. per month 50,283 M cu. ft. at 25¢ per M. ....	12,571
Remaining Revenue required from first 500,000 cu. ft. per month. ....	<u>\$173,328</u>

Sales classified as first 500,000 cu. ft. per month 189,505 M.  
Average rate required for first 500,000 cu. ft. per month 91.5¢.

#### Section IV—Subsection c.

Based on Conditions for Year Ending November 30, 1921.

The total amount of gas sold in the El Reno Division during the year ending November 30, 1921, was 238,718,000 cubic feet which was divided between the two rate classifications approximately as follows:

296	Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....		188,097,000 cu. ft.
Excess " " " .....		50,621,000 "
Total .....		238,718,000 "

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending November 30, 1921, is therefore 298,398,000 cubic feet.

#### A. Calculation of Necessary Rate to Public under Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The cost to the Oklahoma Gas & Electric Company of obtaining a like volume of gas under a gate rate of 25¢ and 20¢ per 1,000 cubic feet, as heretofore explained, would be as follows:

247,777 M cu. ft. at 25¢ per M.....	\$61,944
50,621 " " " 20¢ " " .....	10,124
Total Cost of Gas .....	\$72,068
Other operating expenses for the year ending November 30, 1921, exclusive of depreciation, amortization and returns amounted to .....	\$33,794
Total operating expenses including cost of gas would therefore be .....	\$107,862

Fifteen per cent for depreciation, amortization and returns as heretofore shown amounts to \$53,128.

The total annual gross revenues required are therefore \$160,984 made up as follows:

Cost of Gas .....	\$72,068
Other Operating Expenses .....	35,794
Depreciation, Amortization and Returns .....	53,122
Total Gross Revenues Required .....	\$160,984

A rate of 25¢ per 1,000 cubic feet is about as high as may be established for industrial business under present conditions without serious loss of sales. The revenue obtainable from gas sold in excess of 500,000 cubic feet per month, which would be used principally for industrial or manufacturing purposes, at 25¢ per 1,000 cubic feet, based on sales for the year ending November 30, 1921, is as follows:

50,621 M cu. ft. at 25¢ per M.....\$12,655

After deducting this amount from the total gross revenues required, there remains \$148,329 to be met by sales classified as the first \$500,000 cubic feet per month. As heretofore shown, the total sales comprising the first 500,000 cubic feet per month of the consumers' consumption amounted to approximately 188,097 M cubic feet, which divided into the total gross revenues (\$148,329) required therefrom establishes a necessary rate of 78.9¢ per 1,000 cubic feet for the first 500,000 cubic feet per month.

#### B. Calculation of Necessary Rate to Public under Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

If the gas received from the Oklahoma Natural Gas Company were paid for at a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet per month, the annual gross revenues required for the same volume of business as for the year ending November 30, 1921, would be \$173,107 and the rate required for the first 500,000 cubic feet per month would be 92.0¢ per 1,000 cubic feet, determined as follows:

##### Cost of Gas:

247,777 M cu. ft. at 35¢ per M.....	\$86,722
50,621 " " " 20¢ " " .....	10,124

Total Cost of Gas .....	96,846
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Other Operating Expenses .....	35,794
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Total Operating Expenses .....	132,640
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Net Earnings Required .....	53,122
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Total Gross Revenues Required.....	185,762
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Deduct revenue obtainable from gas in excess of 500,000 cu. ft. per month; 50,621 M cu. ft. at 25¢ per M.....	12,655
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Remaining revenue required from first 500,000 cu. ft. per month .....	\$173,107
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Sales classified as first 500,000 cu. ft. per month 188,097 M.  
 Average rate required for first 500,000 cu. ft. per month, 92.0¢.  
 EDWARD N. STRAIT.

Subscribed and sworn to before me this 8th day of February, 1922, A. D.

JOHN P. RYAN,  
*Notary Public.*

My Commission Expires July 11th, 1923.

Endorsed: Filed in District Court on February 16, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

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No. 5.

*Earnings Available under Certain Rates:*

In the District Court of the United States for the Western District of Oklahoma.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and Muskogee Gas & Electric Company, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

COUNTY OF COOK,  
*State of Illinois, ss:*

Edward N. Strait, being first duly sworn, on oath deposes and says: I have prepared and sworn to other affidavits, dated February 8, 1922, in the above entitled matter, wherein I have shown among other things, the amount of annual net earnings which the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company would obtain from their gas business under the Schedules of rates now in force, assuming that the volume of business remained the same as for the years ending September 30, October 31, and November 30, 1921, and assuming that the gas be paid for under a gate rate consisting of 25¢ per 1,000 cubic feet for all gas received at the city gates, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion sold to customers in excess of 500,000 cubic feet per month. I likewise showed 300 the amount of net earnings on the basis of the present rates assuming that the gas be paid for under a gate rate of 35¢ per 1,000 cubic feet for all gas received at the city gates, except

that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet.

In said affidavits of February 8, 1922, I showed that the net earnings required to equal 15 per cent for depreciation, amortization and returns upon the minimum fair valuation determined by Edward D. Uhlenborn and set forth by him in his affidavit of January 24, 1922, in this matter, are as follows:

Oklahoma City Division .....	\$399,087
Muskogee Division .....	178,758
Enid Division .....	94,015
El Reno Division .....	53,122

#### Net Earnings under Certain Higher Rates.

I have calculated the amount of net earnings which would be available under the following schedules of rates to the public, assuming the same volume of business as for the years ending September 30, October 31, and November 30, 1921, and a gate rate schedule of 25¢ per 1,000 cubic feet for all gas received at the gate except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a gate rate of 20¢ per 1,000 cubic feet for said amount in excess of 500,000 cubic feet per month:

#### Oklahoma City Division.

First 500,000 cu. ft. per month at 60¢ net per 1,000 cu. ft.  
Excess " " " " 25¢ " " 1,000 " "

#### Muskogee, Enid, and El Reno Divisions.

First 500,000 cu. ft. per month at 65¢ net per 1,000 cu. ft.  
Excess " " " " 25¢ " " 1,000 " "

The net earnings which I have ascertained would be obtained under the foregoing conditions are by divisions as follows:

301 (a) Based on Conditions for Year Ended September 30, 1921.

Oklahoma City Division.....	\$428,971
Muskogee Division.....	164,205
Enid Division.....	100,293
El Reno Division.....	29,584

(b) Based on Conditions for Year Ended October 31, 1921.

Oklahoma City Division.....	\$441,997
Muskogee Division.....	165,689
Enid Division.....	100,508
El Reno Division.....	27,917

(c) Based on Conditions for Year Ended November 30, 1921.

Oklahoma City Division.....	\$440,957
Muskogee Division.....	165,632
Enid Division.....	96,505
El Reno Division.....	27,056

I have also calculated the amount of net earnings which would be available under the following schedules of rates to the public, assuming the same volume of business as for the years ending September 30, October 31, and November 30, 1921, and a gate rate schedule of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a gate rate of 20¢ per 1,000 cubic feet for said amount in excess of 500,000 cubic feet per month.

Oklahoma City Division.

First 500,000 cu. ft. per month at 72¢ net per 1,000 cu. ft.	
Excess " " " " 25 " " 1,000 "	

Muskogee, Enid, and El Reno Divisions.

First 500,000 cu. ft. per month at 80¢ net per 1,000 cu. ft.	
Excess " " " " 25 " " 1,000 "	

The net earnings which I have ascertained would be obtained under the foregoing conditions are by divisions as follows:

(a) Based on Conditions for Year Ended September 30, 1921.

Oklahoma City Division.....	\$392,349
Muskogee Division.....	176,612
Enid Division.....	107,375
El Reno Division.....	32,908

(b) Based on Conditions for Year Ended October 31, 1921.

Oklahoma City Division.....	\$410,787
Muskogee Division.....	179,177
Enid Division.....	108,910
El Reno Division.....	31,398

302 (c) Based on Conditions for Year Ended November 30, 1921.

Oklahoma City Division.....	\$408,799
Muskogee Division.....	178,708
Enid Division.....	105,423
El Reno Division.....	30,493

The derivation of the calculated net earnings under the foregoing schedules of rates to the public is set forth below by divisions under the following captions:

- Section I—Oklahoma City Division.
- Section II—Muskogee Division.
- Section III—Enid Division.
- Section IV—El Reno Division.

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## Section I.

## Oklahoma City Division.

## Section I—Subsection a.

Based on Conditions for Year Ending September 30, 1921.

A. Net Earnings under Increased Rate to Public with Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 60¢ net per 1,000 cu. ft.  
 Excess " " " " 25 " " 1,000 "

are as follows:

2,356,045 M cu. ft at 60¢ per M.....	\$1,413,627
993,633 " " " 25 " " .....	248,408
Total Gross Revenues.....	1,662,035
Cost of Gas.....	997,093
Other Operating Expenses.....	235,971
Total Operating Expenses.....	1,233,064
Net Earnings Available for Depreciation, Amortization and Returns.....	428,971

B. Net Earnings under Increased Rate to Public With Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 72¢ net per 1,000 cu. ft.  
 Excess " " " " 25 " " 1,000 "

are as follows:

2,356,045 M cu. ft. at 72¢ per M.....	\$1,696,352
993,633 " " " 25 " " .....	248,408
Total Gross Revenues.....	1,944,760

Cost of Gas.....	1,316,440
Other Operating Expenses.....	235,971
Total Operating Expenses.....	<u>1,552,411</u>
Net Earnings available for Depreciation, Amortization and Returns.....	392,349

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## Section I—Subsection b.

Based on Conditions for Year Ending October 30, 1921.

A. Net Earnings under Increased Rates to Public With Gate Rate  
of 25¢ and 20¢ per 1,000 Cubic Feet.

The gross Revenues available under a rate schedule consisting of—

[55]\*

First 500,000 cu. ft. per month at 60¢ net per 1,000 cu. ft.  
 Excess " " " " 25 " " 1,000 "

are as follows:

	[1,308,417]*
2,378,941 M cu. ft. at 60¢ per M.....	\$1,427,385
772,602 " " " 25 " " .....	<u>193,150</u>

Total Gross Revenues.....	1,620,515
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Cost of Gas.....	946,227
Other Operating Expenses.....	<u>232,291</u>

Total Operating Expenses.....	<u>1,178,518</u>
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Net Earnings available for Depreciation, Amortization and Returns.....	441,997
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B. Net Earnings under Increased Rate to Public With Gate Rate of  
35¢ and 20¢ per 1,000 Cubic Feet.

The gross Revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 72¢ net per 1,000 cu. ft.  
 Excess " " " " 25 " " 1,000 "

are as follows:

2,378,941 M Cu. ft. at 72¢ per M.....	\$1,712,838
772,602 " " " 25 " " .....	<u>193,150</u>

Total Gross Revenues.....	1,905,988
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[\*In pencil in copy.]

Cost of Gas.....	1,262,910
Other Operating Expenses.....	232,291
Total Operating Expenses.....	<u>1,495,201</u>

Net Earnings available for Depreciation, Amortization and Returns.....	410,787
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## Section I—Subsection c

Based on Conditions for Year Ending November 30, 1921.

## A. Net Earnings under Increased Rates to Public With Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 60¢ net per 1,000 cu. ft.  
 Excess " " " " 25 " " 1,000 "

are as follows:

2,387,607 M cu. ft. at 60¢ per M.....	\$1,432,564
808,812 " " " 25 " " .....	202,203

Total Gross Revenues.....	<u>1,634,767</u>
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Cost of Gas.....	958,440
Other Operating Expenses.....	235,370

Total Operating Expenses.....	<u>1,193,810</u>
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Net Earnings available for Depreciation, Amortization and Returns.....	440,957
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## B. Net Earnings under Increased Rates to Public With Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 72¢ net per 1,000 cu. ft.  
 Excess " " " " 25 " " 1,000 "

are as follows:

2,387,607 M cu. ft. at 72¢ per M.....	\$1,719,077
808,812 " " " 25 " " .....	202,203

Total Gross Revenues.....	<u>1,921,280</u>
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Cost of Gas.....	1,277,111
Other Operating Expenses.....	235,370
Total Operating Expenses.....	<u>1,512,481</u>
Net Earnings available for Depreciation, Amortization and Returns.....	408,799

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## Section II.

## Muskogee Division.

## Section II—Subsection a.

Based on Conditions for Year Ending September 30, 1921.

## A. Net Earnings under Increased Rates to Public with Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 65¢ net per 1,000 cu. ft.  
 Excess " " " " " 25 " " 1,000 "

are as follows:

851,246 M cu. ft. at 65¢ per M.....	\$553,310
354,999 " " " " 25 " " .....	88,750
Total Gross Revenues.....	<u>642,060</u>
Cost of Gas .....	359,202
Other Operating Expenses .....	118,653
Total Operating Expenses.....	<u>477,855</u>
Net Earnings available for Depreciation, Amortization and Returns .....	164,205

## B. Net Earnings under Increased Rates to Public with Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 80¢ net per 1,000 cu. ft.  
 Excess " " " " " 25 " " 1,000 "

are as follows:

851,246 M cu. ft. at 80¢ per M.....	\$680,997
354,999 " " " " 25 " " .....	88,750
Total Gross Revenues.....	<u>769,747</u>

Cost of Gas.....	474,482
Other Operating Expenses .....	118,653
Total Operating Expenses.....	<u>593,135</u>

Net Earnings available for Depreciation, Amortization and Returns .....	176,812
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## Section II—Subsection b.

Based on Conditions for Year Ending October 31, 1921.

A. Net Earnings under Increased Rates to Public with Gate Rate of  
25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 65¢ net per 1,000 cu. ft.  
Excess " " " " " 25 " " 1,000 "

are as follows:

849,228 M cu. ft. at 65¢ per M.....	\$551,998
309,692 " " " " 25 " " .....	<u>77,423</u>

Total Gross Revenues.....	629,421
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Cost of Gas .....	346,677
Other Operating Expenses.....	<u>117,055</u>

Total Operating Expenses.....	<u>463,732</u>
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Net Earnings available for Depreciation, Amortization and Returns .....	165,689
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B. Net Earnings under Increased Rates to Public with Gate Rate of  
35¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 80¢ net per 1,000 cu. ft.  
Excess " " " " " 25 " " 1,000 "

are as follows:

849,228 M cu. ft. at 80¢ per M.....	\$679,382
309,692 " " " " 25 " " .....	<u>77,423</u>

Total Gross Revenues .....	756,805
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Cost of Gas.....	460,573
Other Operating Expenses.....	117,055
Total Operating Expenses.....	577,628
Net Earnings available for Depreciation, Amortization and Returns .....	179,177

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## Section II—Subsection c.

Based on Conditions for Year Ending November 30, 1921.

A. Net Earnings under Increased Rates to Public with Gate Rate of  
25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 65¢ net per 1,000 cu. ft.  
 Excess " " " " " 25 " " 1,000 "

are as follows:

854,655 M cu. ft. at 65¢ per M.....	\$555,526
331,591 " " " " 25 " " .....	82,898
Total Gross Revenues .....	638,424
Cost of Gas.....	354,122
Other Operating Expenses.....	118,670
Total Operating Expenses.....	472,792
Net Earnings available for Depreciation, Amortization and Returns .....	165,632

B. Net Earnings under Increased Rates to Public with Gate Rate of  
35¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 80¢ net per 1,000 cu. ft.  
 Excess " " " " " 25 " " 1,000 "

are as follows:

854,655 M cu. ft. at 80¢ per M.....	\$683,724
331,591 " " " " 25 " " .....	82,898
Total Gross Revenues.....	766,622

Cost of Gas.....	469,244
Other Operating Expenses.....	118,670
Total Operating Expenses.....	<u>587,914</u>
Net Earnings, available for Depreciation, Amortization and Returns .....	178,708

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## Section III.

## Enid Division.

## Section III—Subsection a.

Based on Conditions for Year Ending September 30, 1921.

A. Net Earnings under Increased Rates to Public With Gate Rate  
of 25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 65¢ net per 1,000 cu. ft.  
 Excess " " " " 25 " " 1,000 "

are as follows:

476,964 M cu. ft. at 65¢ per M.....	\$310,027
193,701 " " " 25 " M.....	<u>48,425</u>
Total Gross Revenues.....	358,452
Cost of Gas.....	199,898
Other Operating Expenses.....	<u>58,261</u>
Total Operating Expenses.....	<u>258,159</u>

Net Earnings available for Depreciation, Amortization and  
Returns ..... 100,293

B. Net Earnings under Increased Rates to Public With Gate Rate  
of 25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 80¢ net per 1,000 cu. ft.  
 Excess " " " " 25 " " 1,000 "

are as follows:

476,964 M cu. ft. at 80¢ per M.....	\$381,571
193,701 " " " 25 " ".....	<u>48,425</u>
Total Gross Revenues.....	429,996

Cost of Gas.....	264,360
Other Operating Expenses.....	58,261
Total Operating Expenses.....	322,621

Net Earnings available for Depreciation, Amortization and Returns .....	107,375
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## 310 Section III—Subsection b.

Based on Conditions for Year Ending October 31, 1921.

## A. Net Earnings under Increased Rates to Public With Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 65¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

are as follows:

476,289 M cu. ft. at 65¢ per M.....	\$309,588
140,203 " " " 25 " " .....	35,051

Total Gross Revenues.....	344,639
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Cost of Gas.....	185,644
Other Operating Expenses.....	58,487

Total Operating Expenses.....	244,131
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Net Earnings available for Depreciation, Amortization and Returns .....	100,508
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## B. Net Earnings under Increased Rates to Public With Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 80¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

are as follows:

476,289 M cu. ft. at 80¢ per M.....	\$381,031
140,203 " " " 25 " " .....	35,051

Total Gross Revenues.....	416,082
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Cost of Gas .....	248,685
Other Operating Expenses .....	58,487
Total Operating Expenses .....	<u>307,172</u>
Net Earnings available for Depreciation, Amortization and Returns .....	108,910

311

## Section III.

## Enid Division.

## Section III—Subsection c.

Based on Conditions for Year Ending November 30, 1921.

A. Net Earnings under Increased Rates to Public With Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 65¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

are as follows:

462,573 M cu. ft. at 65¢ per M .....	\$300,672
105,826 " " " " 25 " " .....	26,456
Total Gross Revenues .....	<u>327,128</u>
Cost of Gas .....	172,333
Other Operating Expenses .....	58,290
Total Operating Expenses .....	<u>230,623</u>
Net Earnings available for Depreciation, Amortization and Returns .....	96,505

B. Net Earnings under Increased Rates to Public With Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 80¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

are as follows:

462,573 M cu. ft. at 80¢ per M .....	\$370,058
105,826 " " " " 25 " " .....	26,456
Total Gross Revenues .....	<u>396,514</u>

Cost of Gas .....	232,801
Other Operating Expenses .....	58,290
Total Operating Expenses .....	<u>291,091</u>
Net Earnings available for Depreciation, Amortization and Returns .....	105,423

312

## Section IV.

## El Reno Division.

## Section IV—Subsection a.

Based on Conditions for Year Ending September 30, 1921.

A. Net Earnings under Increased Rates to Public With Gate Rate of  
25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 65¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

are as follows:

193,228 M cu. ft. at 65¢ per M .....	\$125,598
60,261 " " " " 25 " " .....	<u>15,085</u>
Total Gross Revenues .....	140,683
Cost of Gas .....	78,202
Other Operating Expenses .....	<u>34,877</u>
Total Operating Expenses .....	<u>111,079</u>
Net Earnings available for Depreciation, Amortization and Returns .....	29,584

B. Net Earnings under Increased Rates to Public with Gate Rate  
of 35¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 80¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

are as follows:

193,228 M cu. ft. at 80¢ per M .....	\$154,582
60,261 " " " " 25 " " .....	15,065
<b>Total Gross Revenues .....</b>	<b>169,647</b>
Cost of Gas .....	101,862
Other Operating Expenses .....	34,877
<b>Total Operating Expenses .....</b>	<b>136,739</b>
<b>Net Earnings available for Depreciation, Amortization and Returns .....</b>	<b>32,908</b>

### 313 Section IV—Subsection b.

Based on Conditions for Year Ending October 31, 1921.

#### A. Net Earnings under Increased Rates to Public with Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 65¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

are as follows:

189,505 M cu. ft. at 65¢ per M .....	\$123,178
50,283 " " " " 25 " " .....	12,571
<b>Total Gross Revenues .....</b>	<b>135,749</b>
Cost of Gas .....	72,420
Other Operating Expenses .....	35,412
<b>Total Operating Expenses .....</b>	<b>107,832</b>
<b>Net Earnings available for Depreciation, Amortization and Returns .....</b>	<b>27,917</b>

#### B. Net Earnings under Increased Rates to Public with Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 80¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

are as follows:

189,505 M cu. ft. at 80¢ per M .....	\$151,604
50,283 " " " " 25 " " .....	12,571
<b>Total Gross Revenues .....</b>	<b>164,175</b>
<b>Cost of Gas .....</b>	<b>97,365</b>
<b>Other Operating Expenses .....</b>	<b>35,412</b>
<b>Total Operating Expenses .....</b>	<b>132,777</b>
<b>Net Earnings available for Depreciation, Amortization and Returns .....</b>	<b>31,398</b>

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## Section IV—Subsection c.

Based on Conditions for Year Ending November 30, 1921.

A. Net Earning under Increased Rates to Public with Gate Rate of 25¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 65¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

are as follows:

188,097 M cu. ft. at 65¢ per M .....	\$122,263
50,621 " " " " 25 " " .....	12,655
<b>Total Gross Revenue .....</b>	<b>134,918</b>
<b>Cost of Gas .....</b>	<b>72,068</b>
<b>Other Operating Expenses .....</b>	<b>35,794</b>
<b>Total Operating Expenses .....</b>	<b>107,862</b>
<b>Net Earnings available for Depreciation, Amortization and Returns .....</b>	<b>27,056</b>

B. Net Earning under Increased Rates to Public with Gate Rate of 35¢ and 20¢ per 1,000 Cubic Feet.

The gross revenues available under a rate schedule consisting of—

First 500,000 cu. ft. per month at 80¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

are as follows:

188,097 M cu. ft. at 80¢ per M.....	\$150,478
50,621 " " " 25 " ".....	12,655
<b>Total Gross Revenues.....</b>	<b>163,133</b>
<b>Cost of Gas.....</b>	<b>96,846</b>
<b>Other Operating Expenses.....</b>	<b>35,794</b>
<b>Total Operating Expenses.....</b>	<b>132,640</b>

Net Earnings available for Depreciation, Amortization and Returns ..... 30,493

(Signed)

EDWARD N. STRAIT.

Subscribed and sworn to before me this 8th day of February, 1922.

(Signed)

JOHN P. RYAN,

[SEAL.]

Notary Public.

My commission expires July 11, 1923.

Endorsed: Filed in District Court on February 16, 1922. Arnold C. Dolde, Clerk, by F. G. Offut, Deputy.

315 In the District Court of the United States for the Western District of Oklahoma.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. R. Freeling, Attorney General for the State of Oklahoma, Defendants.

STATE OF ILLINOIS,

County of Cook, ss:

Arthur S. Huey, being first duly sworn, deposes and says that he is Vice President of Byllesby Engineering and Management Corporation, a corporation organized and existing under the laws of the State of Delaware; that said Byllesby Engineering and Management Corporation is engaged in the engineering business and in the business of supervising and managing public utility companies; that said public utility companies are furnishing one or more classes of public utility service in more than 400 cities, towns and villages located in 16 states of the United States, said classes of public utility service

being the supplying of electric light and power, manufactured and natural gas, steam heat, telephone service, street railway service and the furnishing of water to the public and to municipalities; that for the performance of the numerous duties involved in this the

316 said Byllesby Engineering and Management Corporation employs skilled and highly trained administrative officers, such as a President, several Vice Presidents, a Secretary and a Treasurer; that in addition to this it also maintains well equipped and highly efficient engineering, auditing and accounting, publicity, insurance and rate departments, together with a well equipped library; that for the supervision and management services thus rendered by these officers and by these departments the said Byllesby Engineering and Management Corporation receives certain payments or fees in the way of compensation.

In a broader sense the work of the different departments of the Byllesby Engineering and Management Corporation which is thus performed under the direction of its administrative and executive officers may be grouped under the following general heads:

1. Administrative and Fiscal.—The officers of the Byllesby Engineering and Management Corporation not only direct the work of this Company, but they also, without additional or direct salaries, serve as officers of the associated companies, or the companies managed by it. The President of the Byllesby Engineering and Management Corporation, for instance, also serves as President of the Oklahoma Gas and Electric Company. The officers of the Byllesby Engineering and Management Corporation, through their departments, also perform the various fiscal duties of the associated plants. Such fiscal duties usually consist of the issuing of such notices as are required in connection with this work, the disbursement of interests and dividends, much of the work connected with issuance of bonds and stocks and the transfer of such stock, the keeping of the minutes of the meetings of stockholders, directors and executive committees and other work of this nature.

317 2. Financial.—Acting as fiscal manager, the said Byllesby Engineering and Management Corporation secures the necessary capital for new construction, extensions and improvements and for the funding and refunding of capital investments. It also secures or assists in the securing of circulating capital when local working capital assets are insufficient; and otherwise assists in the financial program of the associated utilities or plants.

3. Operation.—Acting as operating manager, the said Byllesby Engineering and Management Corporation directs and supervises the operation of local properties with specific reference to the following functions:

- a. General Administration
- b. Engineering services
- c. Purchasing of certain supplies

- d. Auditing and Accounting
- e. Publicity and Advertising
- f. Insurance
- g. Rate supervision
- h. Library

4. Construction.—The Byllesby Engineering and Management Corporation undertakes, as a part of its duties, the development of the physical structure of the local utilities. This development must proceed along the lines of a logical plan in order that present and future demands for service may be met at the minimum capital cost. Power plants must be located at points favorable for the delivery to the market and for the procuring of water and fuel. Transmission lines must be designed in accordance with their expected load. Pipe lines must be located with reference to both the present and prospective market in so far as the latter can be foreseen.

All of this engineering must be done, and is done, in accordance with the most modern ideas and practices. Specialists are available in the many branches of engineering such as hydraulic and steam plant design and gas and electric transmission and distribution. A locally operated utility could not, of course, maintain such a staff, nor would it need to, but it would find it necessary to hire such engineers as needed at rates in excess of the charges made for the Management Company's engineers. An important element in this connection is the continuous contact and supervision rendered in the matter of engineering problems which is much more effective than the retainer from time to time of consulting engineers.

It is the "load factor" theory which in matters of engineering as well as financial or operating problems, enables the Management Corporation to supply highly specialized and high grade services to the Oklahoma Gas and Electric Company as needed, relying on the demands of other managed properties to keep the staff busy at other times.

Purchasing of construction materials is undertaken by the Management Corporation's Purchasing Department as outlined in a later section.

The designs and specifications for the power plants and the transmission and distribution systems are built up and interpreted in the light of previous experience, as well as in the light of all other general and special knowledge and information in point that is available. The construction engineers usually take actual charge of the construction work, and thereby also often save the local plant such charges as contractors' profits and the supervision of construction. As these charges usually amount to from 10% to 15% or more of the total cost of such construction, they also greatly exceed the engineering charges or fees for the construction work that are made by the Byllesby Engineering and Management Corporation.

Further than this, the charges for the services of the Byllesby Engineering and Management Corporation are based on only the

amount of net new construction after deduction of the value of property replaced, if any. In case preliminary work is done on  
319 any project, not resulting in actual construction, no charges are made. In general practice, consulting or construction engineers make charges based on gross construction cost.

As the construction charges are not involved in these proceedings, no further reference will be made on same herein.

\* \* \* \* \*

Affiant further deposes and says that substantially all of the services, specified above in general, are rendered to, or in behalf of, the Oklahoma Gas and Electric Company and the Muskogee Gas and Electric Company in particular, and shows in the following paragraphs a more detailed analysis of the nature of these services as relating to financing and operating, and their application to the Oklahoma Gas and Electric Company, the name of which company as used herein includes the Muskogee Gas and Electric Company as well.

The Byllesby Engineering and Management Corporation performs much work for its associated companies, and that this work is of such character that if not so performed by this Company it would have to be obtained and paid for in some other way. The services so rendered by the Byllesby Engineering and Management Corporation is of the highest grade and of such character as to require skill, training and judgment of the highest order. It is service that is scarce and very valuable to those to whom it is rendered and therefore commands the highest prices in the general markets. The closest analysis of the facts and conditions involved discloses very conclusively that the fees thus charged by the Byllesby Engineering and Management Corporation for these services are lower than the cost at which such services could be had in any other way. To regularly employ officers and others who are qualified to render equally good service would be much more costly. It would, in fact, cost so much as to be prohibitive to all but the very largest plants. This is also true of the cost of consulting experts if employed as frequently as needed.

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#### Cost of Financing.

One of the most important advantages derived by the utilities which are associated with or managed by the Byllesby Engineering and Management Corporation is that these utilities are thereby enabled to secure capital for new construction and for improvements as well as for refunding purposes much more easily and at much lower cost than would otherwise be the case.

To secure all the capital that is required for good service by the utilities is a big task. Such capital must largely be had in the financial centers through banks and bond houses from investors who are their customers. Capital, like other things, must be obtained where it is available and transported to and used in places where it is needed. The conditions upon which capital can be had are difficult to meet or comply with.

To obtain capital, good earnings and credit or good backing is required. A utility of considerable size with good earnings and an efficient management and that is also well known to investors can sometimes obtain capital at a fair cost even if it is not associated with a larger managing or holding company. For the smaller utilities, however, this is seldom the case. It is well known that the smaller plants when operated independently cannot as a rule earn enough to long be kept in an efficient operating condition and placed in such a position with respect to their credit and business connection that they can command all the capital they need on terms that are usually considered fair. In fact such plants often find it impossible to obtain any capital at all, at least on terms that they can afford to accept.

In order to obtain all the capital they need, it is usually necessary for the ordinary plant to be associated with a larger and stronger company, well known to the investor for its efficient and sound operating and financial methods. Such companies, because they are operating on a large scale, are in a position to maintain their plants, both small and large in an efficient operating condition at comparatively small cost. Such companies further can afford to maintain a management that understands financial and industrial conditions and are therefore in position to shape their course in accordance therewith, and to take advantage of the more favorable conditions that are appearing from time to time. Such companies and such managements further usually enjoy such other connections as are absolutely necessary to obtain capital on the best terms.

The Byllesby Engineering and Management Corporation meets these requirements. Its associated plants are exceptionally well kept up and are in a high state of efficiency. It is in a position to maintain its plants in this condition because it is operating on a scale that is sufficiently large to keep the maintenance and other operating costs down to comparatively low levels. It has long experience in operating and financial matters as well as close connection with other financial interests. The efficiency of its operating methods and the integrity of its financial practices are generally recognized. It is for such reasons as these that it has been able to obtain new and much needed capital for its associated plants even during the past few years when capital was so scarce and so costly that most other concerns were utterly unable to obtain any capital at all on any terms.

In addition to its ability to obtain large sums of capital in the general market under such adverse conditions as those outlined, the Byllesby Engineering and Management Corporation has also developed customer-ownership method of raising needed capital. Under this plan it can sell well secured preferred stock to its customers while the proceeds therefrom reduces by that much the amounts that have to be raised in the financial centers. This point is important. It establishes a closer relation between the plants and their customers. In short it places the customers in a position to know the conditions with which the plants are confronted and it also enables them to share in any profits which such plants may earn.

The value of the financial services which the Byllesby Engineering and Management Corporation renders to its associated companies is often so great or important to the public that it is doubtful whether an adequate value can be placed upon them in the ordinary way. Through the position and methods employed by this company, the customers of even its smaller plants were as a rule adequately served, even during the most strained periods of the war and post-war conditions.

The Oklahoma Gas and Electric Company has enjoyed its full share of the advantages derived from being associated with the Byllesby Engineering and Management Corporation. Investigations have disclosed and the affiant believes that the capital obtained by the Oklahoma Gas and Electric Company for construction and for refunding purposes has been so secured at a cost that is at least one-half of one per cent per annum lower than the cost at which this company itself, standing alone or independently of the Byllesby Engineering and Management Corporation, could have obtained it. As the bonded indebtedness now stands at about \$12,000,000, this is a savings on this part of the financing alone, or on that part of the capital which was obtained on bonds of about \$60,000 per annum.

But all the capital needed cannot be, and has not been obtained, on bonds. In fact not more than about three-fourths of the

323 total investment has been financed through bonds and notes.

The remaining part of the capital was had through the sale of stock. Experience shows that on that part of the capital that has been obtained through sales of stock to the customers and others, the savings are even greater, relatively, than those shown above for the bonds. But even if it is assumed that through the connections with the Byllesby Engineering and Management Corporation the savings in cost is no greater for that part of the capital which was obtained on stocks than was the case for that part of the capital which was had on bonds and notes, it is still found that the savings on the cost of the capital obtained on stocks is not less than \$15,000 per annum.

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#### Operation.

The operating department of Byllesby Engineering and Management Corporation is in direct charge of the supply of service. It is its function to develop the property, not only by meeting the demands for service but by creating the demand in accordance with the general principles of business development which eventuate in decreasing costs. It is the function of the engineering department to supply the necessary physical structure needed by the operator and it is the function of the fiscal managers to procure the money necessary to create the physical structure, hence the general interrelation of the functions of Byllesby Engineering and Management Corporation makes for close co-ordination and co-operation.

The operating department then is responsible for the production and marketing of the service or commodity rendered. This involves functions beginning with the gathering of materials used in such production and marketing, and ending with the maintaining of and

the accounting for of the net earnings remaining after operating costs. All of this work is closely supervised by Byllesby Engineering and Management Corporation, although, of course, most of the actual work must of necessity be done locally.

To the end that this supervision may be properly maintained and the most efficient results obtained, a staff of operating experts is maintained in the office of the managing corporation. Conduct of operation as a whole is in direct charge of the Vice President in Charge of Operation, who generally oversees the results of operation and delegates specific problems to the members of the staff best suited to report thereon. Such report being had, final disposition of the matter is made on the basis of that report, considered in the light of general conditions. A large part of the time of the executive in charge is devoted to the affairs of the Oklahoma Gas and Electric Company.

### Engineering in Replacements.

The outstanding importance of engineering in public utility industries would seem to require no discussion. It represents the foundation upon which the entire structure must stand. Engineering knowledge and advice is inseparable from the proper construction, renewal, repairs and operation of such utilities. The rapid development of utilities, that has taken place during the past two or three decades, is largely due to the engineers and to new discoveries or inventions.

While much of the engineering service is rendered in connection with new construction, a question that is not involved herein, much of it is also devoted to matters connected with the replacing and repairing of worn-out or used up plant property and to other operating problems.

The larger units of the equipment must be replaced when they become useless either because of time or general decay, or when they become either too small or weak or when through progress in the art they are out of date. Such renewals must be made at more or less frequent intervals, and is usually called depreciation renewals.

The smaller parts of the larger units of the equipment wear out or break very frequently, and must be repaired or replaced as often.

Repairs are in fact constantly going on, and are usually called

326 maintenance.

The cost of thus replacing both the larger units themselves and the smaller parts of such larger units are great. Together they amount to not less than 6.5% on the cost of the physical property for such plants as those involved in this case. In fact the average annual cost is not less than about \$450,000 for depreciation, and about \$300,000 for ordinary repairs.

The engineering services involved in connection with depreciation replacements and for repairs are practically the same as the engineering services involved in the first construction. In connection with such up-keep the equipment must be regularly inspected and tested. When it is thus found that the existing units and their parts have be-

come too weak or too small, or too much out of date to render good service, they must be replaced by new and up-to-date units. Whether the larger units that are thus put in shall be larger or more powerful than the units taken out depends upon whether the demand for service is increasing and the rate of such increase. The engineering work required in connection with replacements thus involves close studies not only of the plant itself and its equipment but of the local conditions in other respects, and by which the plants are surrounded. Since as much engineering and supervision work is thus needed in connection with replacements as in connection with the original construction, it also follows that the engineering and supervision cost is also about the same in both cases. The ordinary engineering and supervision cost amounts to about 7.5% on the total cost of

327 construction or reconstruction. When this rate is applied to the average annual cost of depreciation replacements, which cost in this case is about \$450,000, it is found that the annual engineering and supervision service in this case amounts to about \$33,700. If this cost has not been provided for elsewhere, it represents a saving to the associated plants that should be taken into account herein. Much the same reasoning might also be applied to the engineering services involved in connection with the cost of repairs or maintenance, but this is not done herein or in connection with this case.

In connection with the operation of the plants, much engineering service is also rendered. The plants are frequently inspected and tested for the purpose of determining their condition. The operating reports are carefully examined and analyzed. Whenever either through inspection or through these reports unusual conditions are disclosed, the situation is investigated. If it is thus found that there is any loss in operating efficiency, remedies are found and applied. It is largely because of such care or attention as this that the plants are able to show good results.

### Purchasing.

The purchasing ability of any enterprise is largely governed by consideration of credit and of the volume of such purchases.

The management corporation has a most excellent credit standing and by virtue of consolidated buying it controls a volume of business which results in most economical purchasing. Its purchasing engineers are in very close touch with the market and place their

328 contracts at advantageous times. Through their knowledge of manufactured commodities, they eliminate the experimental stage which independent plants undergo. Certain types of materials, supplies and equipment are purchased under blanket contracts with large manufacturers for the total requirements of all operated properties whereby greater discounts are given to, and received by, the local companies using the supplies. Under these contracts the local companies order direct from the manufacturers and the total of such orders establishes the discount rate.

The purchasing engineers place orders for materials, supplies and

equipment used for both construction and operation and during 1921 the volume of this business amounted to over \$2,600,000 for all properties managed, and for the Oklahoma Gas and Electric Company, to approximately \$540,000. These amounts, moreover, do not fully represent the purchases of a normal year. It is the judgment of this Company that a saving of no less than 10% is made by the Oklahoma Gas and Electric Company through the instrumentality of the management company upon this amount and that the saving was, therefore, not less than \$54,000 in 1921, which period is used by way of illustration.

### Auditing and Accounting.

Scientific auditing and accounting is today one of the essential elements of successful utility operation. There is no part of the construction, operation or financing of the property that does not require the exacting application of accounting. It must be done under expert supervision and at the least cost consistent with the results to be obtained.

Public utility accounting as standardized in greater or less  
329 degree by the many regulatory bodies in the various states sets forth only the broad outlines. The subsidiary records must be comprehensive, yet economical and practical.

The duties of the auditing department are broad. They include:

1. Supervision of all auditing and accounting of the operated companies.
2. Devising modern accounting forms.
3. Supervision of the preparation of financial, tax and similar reports.
4. Assists in qualification of securities under the laws regulating their sale.
5. Prepares pertinent data for use in financial publications.
6. Supervises compilations of statistics relating to the financing, operation and construction of the utilities operated.
7. Prepares information for stockholders and investors.
8. Gives personal instructions to local auditors by means of visits to the various properties.

All of these services are rendered to, or in behalf of, the Oklahoma Gas and Electric Company. Their value is great but there is a practical difficulty in assessing the value in dollars, for instance, of an improved accounting system over the old, or of the many other services rendered. The value of services rendered the Oklahoma Gas and Electric Company, however, is not less than \$10,000 per annum.

### Advertising and Publicity.

Modern public utility practice requires that a close contact between the public utility and the public it serves be maintained. The Advertising and Publicity Department of the Byllesby Engineering and Management Corporation exercises continuous supervision over the advertising and publicity requirements of the Oklahoma Gas and Electric Company and their expenditures in that connection. It renders continuous counsel; supplies a large amount of advertising copy, materials for illustrations, etc., including a regular monthly electric and gas advertising service; has prepared many special advertisements and articles for the use of the Oklahoma Company; assisted in the development of new business campaigns; supplied suggestions, advice and information relating to the maintenance of satisfactory public relations, municipal ownership, competition, etc.; has originated and supplied plans, advertising copy, etc., relative to the customer-ownership sales of securities; has given national publicity to the earnings, progress and development of the Oklahoma Company; and has in general carried out the function of advertising and publicity service and counsel in a continuous, effective, systematic and conscientious manner.

As an example of the work done and its saving to the Oklahoma Gas and Electric Company, the monthly gas and electric commercial advertising service which is supplied through the Advertising and Publicity Department at a cost of \$1,200 per year would cost from \$2,000 to \$2,500 per year if obtained direct. In addition to this monetary saving—both of these services have the careful supervision of this department each month before forwarding to the local companies.

The department is at all times in close touch with the various local activities of the company, knows and understands the organization and its history thoroughly so that the briefest recital of a company's advertising or publicity requirements is sufficient to enable a prompt compliance with any request for material. The department has frequently rendered invaluable assistance to the Oklahoma Company along these lines, on occasions one man spending as much as two months continuous time at a given local situation.

These services are rendered under the supervision fee and are only possible through the high load factor at which the department operates. Affiant places a minimum value of \$10,000 per annum on these services, but believes that, had these services been rendered by independent experts, the cost would be much in excess of that sum.

### Insurance.

The Byllesby Engineering and Management Corporation maintains an Insurance Department which is in direct charge of all insurance matters pertaining to the various public utilities operated by it. For the Oklahoma Gas and Electric Company there is carried:

1. Fire Insurance.
2. Tornado Insurance.
3. Public Liability Insurance.
4. Workmen's Compensation Insurance.
5. Boiler Insurance.
6. Fly-wheel Insurance.
7. Automobile Fire and Theft Insurance.
8. Plate Glass Insurance.
9. Bonds of all kinds.

The aim of the Insurance Department is to secure maximum protection at minimum cost. The former is secured through the insurance specialist, skilled in all matter pertaining to hazards, risks, and adjustments. Minimum cost is obtained through volume of business. Many small fire insurance companies have withdrawn from competition for our business as they cannot find a sufficient margin of profit on the rate the insurance department obtains through elimination of fire hazards, plant cleanliness, etc. On the other hand, large fire insurance companies are constantly seeking our business. The saving obtained on fire insurance is not one of preferential rates, but of reduced rates through elimination of hazards which the ordinary local manager knows nothing of, and of which he is not advised by local insurance agents.

The Management Corporation believes that the saving effected by it for the Oklahoma Gas and Electric Company amounts to \$14,500 annually.

#### Rates.

The rate structure of a utility is important in that it constitutes the basis upon which business is developed. Rates determine the charge made to the public and they also determine the gross earnings of the utility. While public utility rates in Oklahoma as well as elsewhere are subject to regulation, yet in a larger sense, certain rates are still subject to the economic regulation of competition with other sources of power.

Comprehensive knowledge of both the cost and the value of service is essential to the proper construction of the rate structure. The Byllesby Engineering and Management Corporation maintains a Rate Department whose function it is to exercise supervision over the rates at all local properties.

The duties of this department cover not only supervision of existing rates, but extend also to the construction of new rates where existing schedules are found not suitable owing to changed conditions, competition with isolated plants, etc. Their duties also include preparation of reports to the executive in charge

relating to contracts for the sale or purchase of large blocks of power, reports relating to operating costs and changes therein, both realized and prospective.

The manager of this department has spent a great deal of time in Oklahoma during the past year on matters relating to rates and he and his assistants have spent in the aggregate even more time in the Chicago office on these same matters. The value of these services is not less than \$7,500 in the judgment of affiant.

### Library.

The Byllesby Engineering and Management Corporation maintains one of the largest privately-owned public utility libraries in the United States in charge of an especially skilled librarian. This library is constantly used by officers and employees of the Management Company and the services of the librarian and her staff are at the complete disposal of the staff. The facilities of the library are at the disposal of the local staff of the Oklahoma Gas and Electric Company.

### 334 Application of the Principle of Group Management with Reference to the Oklahoma Gas and Electric Company.

In the preceding pages, the affiant has shown the functions of the Byllesby Engineering and Management Corporation in general and as applied to the Oklahoma Gas and Electric Company in particular. Group management is successful because of the successful application of the known fact that operation at a high load factor is more economical than operation at a low load factor. A high load factor is obtained through the operation of many utility properties, thus enabling the services of various kinds of experts to be fully utilized.

Group management in this case involves not only the operation of the Oklahoma Gas and Electric Company along with other kindred utility properties in sixteen states of the Union, but the operation of the Oklahoma Gas and Electric Company as a unit supplying service to Oklahoma City, Muskogee, Enid, El Reno, Sapulpa and other cities and towns, is in itself an application of group management whereby more economical and efficient service is rendered through the creation of a single state unit rather than the operation of independent plants in each of the cities or localities served.

The grouping of three functions of fiscal management, operating and engineering under a single management company in itself tends to a closer co-ordination and co-operation among these three important functions.

The charge made to the Oklahoma Gas and Electric Company under existing contracts consist of two parts, viz:

#### a. A Management charge of:

1. Two and one-half per cent of the gross earnings of the Oklahoma Gas and Electric Company.

335 2. Per diem charges for the services of members of the staff when engaged in work for the Oklahoma Gas and Electric Company away from the home office.

3. Traveling expenses incurred under (2) above.

4. Such items as postage, telephone and telegraph charges, printing, etc., when incurred directly for the Oklahoma Gas and Electric Company.

b. An engineering fee of

1. Seven and one-half per cent of the net cost of new construction or additions.

2. Per diem charges for services of engineers when engaged in work for the Oklahoma Gas and Electric Company away from the home office.

3. Traveling expenses incurred under (2) above.

4. Such items as postage, telephone and telegraph charges, printing, etc., when incurred directly for the Oklahoma Gas and Electric Company.

Such construction charges as are made under the above contracts are not reflected in the rate base established and hence are not of vital concern in the purposes of this affidavit. The books of the Oklahoma Gas and Electric Company show the following charges in the operating accounts from charges made by the Byllesby Engineering and Management Corporation for the year 1921, which charges are the only charges which effect the net income of the Oklahoma Gas and Electric Company:

One-half of supervision fee.....	\$65,760.67
Services, traveling, etc.....	14,867.34
Total .....	\$80,628.01

It is the opinion and judgment of affiant that such sum is entirely reasonable and proper, and that, if the Oklahoma Gas and Electric Company were operated as an independent unit, the total cost for equivalent services would be greater, and that if the various cities and localities which now comprise the territory of this company, were served by separate utilities, each operating independently, the total cost would be still greater.

336 If the Oklahoma Gas and Electric Company were operating as an independent utility, it would require the services of certain officers not now carried on the local pay-roll, which officers would command large salaries by reason of their ability to carry out, in some measure at least, the functions now performed by the managing corporation.

Following is a complete list of the present officers and assistant officers of the Oklahoma Gas and Electric Company:

President .....	H. M. Byllesby.
Vice-President .....	Arthur S. Huey.
Vice-President .....	J. J. O'Brien.
Vice-President .....	R. J. Graf.
Vice-President .....	C. C. Levis.
Vice-President .....	J. F. Owens.
Vice-President .....	F. C. Gordon.
General Manager .....	J. F. Owens.
Secretary and Treasurer .....	W. R. Emerson.
Assistant Secretaries and Treasurers .....	R. J. Graf.
	M. A. Morrison.
	B. W. Lynch.
	Herbert List.
	P. A. Lehmkuhl.
	L. M. Sage.
	Melburn Brant.

Of the above, J. F. Owens and W. R. Emerson, resident officers, are the only officers who receive a salary from the Oklahoma Gas and Electric Company. The services of all others are included in the supervision fee.

It is the judgment of affiant that the local utility, independently operated, would require the following officers:

President,  
Vice President and General Manager,  
Vice President in charge of Finance and Public Relations,  
Secretary and Treasurer,  
General Auditor.

It is the further judgment of affiant that competent officers could not be secured at less than an increase of \$50,000 over the amount now carried on the payroll of the Oklahoma Gas and Electric Company, and it is the further judgment of affiant that even 337 were these salaries paid, the men could not be secured who would have the same close contact with the financial market nor who could produce equivalent results in other respects. Nor would their employment render unnecessary the services of certain specialized experts on auditing, accounting, publicity, engineering, insurance and rate matters.

It is a difficult matter to evaluate the connection of the Oklahoma Gas and Electric Company with the Byllesby Engineering and Management Corporation. Affiant has set forth in certain instances amounts which represent in his judgment minimum values for the services rendered. These amounts largely overbalance the operating charge made therefor. No attempt has been made in other instances to assign values where the services rendered are of real value and assistance to the Oklahoma Gas and Electric Company.

All of the services of the Byllesby Engineering and Management Corporation are under the direction and control of the directors of the Oklahoma Gas and Electric Company.

Further deponent saith not.

ARTHUR S. HUEY.

Subscribed and sworn to before me this 7th day of February, 1922.

[SEAL.]

A. LOUIS FLYNN,  
*Notary Public, Cook County, Illinois.*

My Commission expires: June 23, 1924.

Endorsed: Filed in District Court on February 16, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

338 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Equity.

OKLAHOMA GAS AND ELECTRIC CO., a Corporation, and MUSKOGEE GAS AND ELECTRIC CO., a Corporation, Complainants,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.,  
Defendants.

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

Wm. H. Cruther being first duly sworn, says: I am Superintendent of the Gas Department of the Oklahoma Gas and Electric Company and have charge of the operation of the gas department of the Oklahoma Gas and Electric Company in the cities of Oklahoma City, El Reno, and Enid, and the towns of Bethany, Britton and Yukon, and also have charge of the operation of the gas department of the Muskogee Gas and Electric Company in the City of Muskogee, Oklahoma, having occupied such position for the past four years; that prior to my employment with the Oklahoma Gas and Electric Company I was, for fifteen years, General Superintendent of the Kentucky Heating Company at Louisville, Kentucky, and was also Superintendent of the Gas Department of the Louisville Gas and Electric Company at Louisville, Kentucky.

That I have made a careful study of the question of unaccounted for gas in the properties operated by the Oklahoma Gas and Electric Company, and the Muskogee Gas and Electric Company, and find that the unaccounted for gas in the entire system operated by the Oklahoma Gas and Electric Company and the Muskogee Gas and Electric Company for the year beginning December 1, 1920, and ending November 30th, 1921, is in excess of twenty per cent (20%) of the volume of gas delivered to said complainants at the city gates.

339 Affiant further states that he knows in a general way the amount of unaccounted for gas in other distributing plants within the State of Oklahoma and that the unaccounted for gas in Oklahoma City, Britton, Yukon, El Reno, Enid and Muskogee

is much less than in many of the other distributing plants and is not above the average within the State of Oklahoma.

Affiant further states that he is familiar with the distributing plants of the Oklahoma Gas & Electric Company in the cities of Oklahoma City, Enid and El Reno and of the Muskogee Gas & Electric Company in the City of Muskogee. That many of the streets and alleys in the cities named are paved principally with asphalt. In each of them there are street railway systems whose tracks are not properly bonded, which results in currents of electricity getting on to the underground pipes of the company and when these stray currents leave the pipes a pitting action called electrolysis is produced. This process in many cases completely destroys the pipes and in other cases practically destroys the same through its pitting action which in time produces holes through which the gas escapes thereby largely increasing the unaccounted for gas in said distributing plants. This condition is in no way attributable to the fault of the Oklahoma Gas & Electric Company or the Muskogee Gas & Electric Company and can only be prevented by the street railway companies. In order to materially reduce the percentage of unaccounted for gas and to maintain such reduced percentages of unaccounted for gas and to maintain such reduced percentages would necessitate the expenditure of large sums of money. Unaccounted for gas amounting to only 200,000 cubic feet per annum per mile of 3-inch main or its equivalent would be equal to a loss of less than two per cent in the distributing plants of the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company. No make of meter designed for measuring gas in large volumes under high pressure is guaranteed to register more closely than this.

Further affiant saith not.

(Signed)

WM. H. CRUTCHER.

Subscribed and sworn to before me this 10th day of February, 1922.

(Signed)

HELEN THORNTON,  
*Notary Public.*

My commission expires Nov. 9, 1923.

340      Endorsed: Filed in District Court on February 16, 1922.  
Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

341

Ullendorf.

In the District Court of the United States for the Western District of Oklahoma.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

Edward D. Ullendorf, being first duly sworn, on oath deposes and says: I am thirty-four (34) years of age and a resident of the City of Chicago, State of Illinois, and am a valuation engineer in the employ of the Byllesby Engineering & Management Corporation, in said City of Chicago. I was born in Chicago, Illinois and obtained my engineering education in Crane Technical High School and Armour Institute of Technology, in the City of Chicago. I am an Associate Member of the American Society of Civil Engineers, Corporate Member of the Western Society of Engineers and Associate Member of the American Institute of Electrical Engineers. From June, 1907 to March, 1911, I secured my general engineering practice, acting as surveyor, inspector on concrete work, telephone workman, draughtsman and superintendent of construction. In April, 1911, I entered the employ of H. M. Byllesby & Company as engineer on valuation work. From that date, my entire experience covering over ten years, has been in connection with inventory and valuation of public utility properties.

342 As Engineer of the Report Department of the Byllesby Engineering & Management Corporation, I made a detailed inventory and valuation of the gas properties of the Oklahoma Gas & Electric Company, and of the Muskogee Gas & Electric Company. My findings have been incorporated in four main exhibits, which were submitted in a hearing before the Corporation Commission of the State of Oklahoma, in December, 1920, and are now on file there. These four main exhibits covered the following: Valuation of Gas Utility in the Oklahoma City Division, Valuation of Gas Utility in the Muskogee Division, Valuation of Gas Utility in the Enid Division and Valuation of Gas Utility in the El Paso Division.

I have determined the values on various valuation bases, of said properties of the Oklahoma Gas & Electric Company, and Muskogee Gas & Electric Company, as of March 31, 1920, as follows:

	Reproduction cost new.	Present value.	Reproduction cost (5 yr. avg.).	Rep. cost less depreciation (5 yr. avg.).
Oklahoma City Division..	\$3,152,905	2,296,901	2,539,793	1,853,286
Muskogee " ..	1,374,904	1,061,121	1,106,630	846,001
Enid " ..	740,722	525,613	502,146	420,002
El Reno " ..	415,785	316,210	366,042	279,172

The values as above listed do not include Going Value, Working Capital, Cost of Money or any items whatsoever of an intangible nature.

Explanation of the above valuation basis as follows:

Reproduction Cost New, is the estimated cost in cash of reproducing the property as of March 31, 1920, and is based on prevailing market quotations of material and cost of labor as of that date.

Present Value, is that value which remains after deducting from the Reproduction Cost New and amount to cover the actual depreciation of the physical elements of property, due to wear and tear, inadequacy or other causes. Accrued depreciation has been estimated by field inspection. In determining the physical condition of all items of property, I have considered the history of past service; probable character of future service; method and character of maintenance and all other pertinent facts.

343 In the case of gas mains and services, when laid in unpaved streets, I have uncovered the pipe in order to determine its physical condition. Where it was impossible and impracticable to uncover pipe, referring to that laid under pavement, the physical condition was estimated by means of data secured from records of the Company, considered in conjunction with information already secured by the actual examination of the pipe uncovered.

Reproduction Cost is the estimated cost if reproducing the physical property as of March 31, 1920, and is based on 5 year weighted average unit material and labor cost covering the period April 1, 1915 to March 31, 1920.

Reproduction Cost less Depreciation is that value which remains after deducting from the Reproduction Cost an amount to cover the actual depreciation of the physical elements of property.

The reason for preparing valuations on different bases was that in March 1920, it was thought that prices governing property included in the various utilities covered by my reports had reached an extremely high limit, and in my opinion and that of engineers generally, an average price based on 5 year averages covered by the time indicated above, would more nearly reflect the fair and reasonable value of the property used and useful in distributing natural gas in the cities of Oklahoma City, Muskogee, Enid and El Reno.

The physical quantities, to which the various unit costs were applied to secure the valuation figures, are based on actual field count and inspection of records of the Oklahoma Gas & Electric Company, and the Muskogee Gas & Electric Company.

I have also examined the records of the Companies and have derived the amount of net construction additions to the several prop-

erties as above listed, for the period April 1, 1920 to September 30, 1920, inclusive, and have determined therefrom the following values, as of September 30, 1920:

	Reproduction cost new.	Present value.	Reproduction cost (5 yr. avg.).	Rep. cost less depreciation (5 yr. avg.).
Oklahoma City Division..	\$3,191,968	2,335,964	2,578,856	1,892,349
Muskogee " ..	1,386,087	1,062,304	1,116,813	857,244
Enid " ..	747,038	531,929	598,462	426,318
El Reno " ..	415,906	316,391	366,224	279,358

I have furthermore examined the records of the Companies  
344 and have derived the amount of net construction additions to the several properties, as above listed, for the period of September 30th, 1920, to September 30th, 1921, inclusive and have determined therefrom the following values, as of September 30th, 1921:

	Reproduction cost new.	Present value.	Reproduction cost (5 yr. avg.).	Rep. cost less depreciation (5 yr. avg.).
Oklahoma City Division..	\$3,292,640	2,436,636	2,679,528	1,993,021
Muskogee " ..	1,411,209	1,087,516	1,142,025	882,456
Enid " ..	770,742	555,633	622,166	450,022
El Reno " ..	419,835	320,260	370,093	283,222

As previously stated, the values as above listed do not include Going Value, Working Capital, Cost of Money or any items whatsoever of an intangible nature.

In order to correct the valuations of March 31, 1920 of the several gas properties, as above listed, to date of December 31, 1921, I have added the net construction expenditures from March 31, 1920 to December 31, 1921, inclusive, and have determined therefrom the following values, as of December 31, 1921:

	Reproduction cost new.	Present value.	Reproduction cost (5 yr. avg.).	Rep. cost less depreciation (5 yr. avg.).
Oklahoma City Division..	\$3,338,557	2,482,553	2,725,445	2,088,968
Muskogee " ..	1,435,025	1,111,242	1,165,751	906,182
Enid " ..	781,977	566,868	633,401	461,257
El Reno " ..	426,500	326,925	376,757	289,887

As previously stated, the values as above listed do not include Going Value, Working Capital, Cost of Money or any items whatsoever of an intangible nature.

It is commonly known that material prices covering the commodities entering into the construction of the aforesaid gas properties have materially decreased when comparing the present day prices, December 1921, with prices prevailing during March 1920. It is furthermore known that labor wages have decreased when compared on the above mentioned dates. For these reasons, I have determined the valuations of the aforesaid gas properties, predicated same on pre-

vailing material and labor prices as of December 1921, and have added thereto the net construction expenditures for the period March 31, 1920 to December 31, 1921 inclusive, the resulting valuations being as of December 31, 1921, and are as follows:

	Reproduction cost new.	Present value.	Reproduction cost (5 yr. avg.).	Rep. cost less depre- ciation (5 yr. avg.).
345				
Oklahoma City Division..	\$2,592,743	1,942,828	3,242,657	2,417,206
Muskogee " ..	1,106,783	866,051	1,389,381	1,083,652
Enid " ..	627,896	457,770	786,289	570,229
El Reno " ..	334,548	256,828	421,983	323,279

The above values do not include Going Value, Working Capital, Cost of Money or any items whatsoever of an intangible nature.

After taking into consideration all of the elements, including Working Capital, which should be considered in fixing a fair valuation of the property used and useful in the distribution of natural gas in the cities and towns hereinbefore referred to, it is my opinion that the fair valuation as of the present time of said property in the Oklahoma City Division, which includes Oklahoma City, Bethany, Putnam City, Britton and Yukon is not less than \$2,660,583, in the City of Muskogee is not less than \$1,191,723, in the City of Enid is not less than \$626,766, and in the City of El Reno is not less than \$354,146.

EDWARD D. UHLENDORF.

Subscribed and sworn to before me this 24th day of January, A. D. 1922.

[Seal of Jane Heyman, Notary Public, Oklahoma City, Okla.]

JANE HEYMAN,  
Notary Public.

My Commission Expires June 17, 1922.

Endorsed: Filed in District Court on February 16, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

346 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

Arthur H. Kuhn, being first duly sworn, on oath deposes and says: I am thirty (30) years of age and a resident of the City of Chicago, State of Illinois, and am a valuation engineer in the employ of the Byllesby Engineering & Management Corporation, in said City of Chicago, Illinois, and obtained my engineering education at the University of Michigan, in the town of Ann Arbor, State of Michigan. I am an Associate Member of the American Institute of Electrical Engineers. My preliminary engineering experience I received during the years 1912 and 1913, acting as timekeeper, sub-foreman, inspector of concrete masonry, draughtsman and surveyor. In March 1914, I entered the employ of H. M. Byllesby and Company, as junior engineer, on valuation work. From that date my experience with the exceptions of twenty-one (21) months in the service of the United States Army, as Second Lieutenant, Field Artillery, has been in connection with inventory and valuation of Public Utility properties:

As assistant engineer of the Report Department of the Byllesby Engineering & Management Corporation, I assisted in making a detailed inventory and valuation of the gas properties of the Oklahoma Gas & Electric Company, and of the Muskogee Gas & Electric Company, which findings have been incorporated in four main exhibits, and were submitted in a hearing before the Corporation Commission of the State of Oklahoma, in December 1920, and are now on file there. These four main exhibits covered the following: Valuation of Gas Utility in the Oklahoma City Division, Valuation of Gas Utility in the Muskogee Division, Valuation of the Gas Utility

347 in the Enid Division and Valuation of Gas Utility in the El Reno Division.

I have assisted in determining the value on various valuations bases of said properties of the Oklahoma Gas & Electric Company and Muskogee Gas & Electric Company as of March 31, 1920, which are as follows:

		Reproduction cost new.	Present value.	Reproduction cost (5 yr. avg.).	Rep. cost less depreciation (5 yr. avg.).
Oklahoma City Division..		\$3,152,905	2,296,901	2,539,793	1,853,286
Muskogee	" ..	1,374,904	1,051,121	1,105,630	846,061
Enid	" ..	740,722	525,613	592,146	420,002
El Reno	" ..	415,785	316,210	366,042	279,172

The values as above listed do not include Going Value, Working Capital, Cost of Money or any items whatsoever of an intangible nature.

The physical quantities, to which the various unit costs were applied in order to secure the valuation figures, are based on actual field count and inspection of records, of the Oklahoma Gas & Electric Company, and the Muskogee Gas & Electric Company.

I have also assisted in examining the records of the companies and have derived the amount of net construction additions to the several properties as above listed, for the period of April 1, 1920 to September 30, 1920, inclusive, and have determined therefrom the following values, as of September 30, 1920:

		Reproduction cost new.	Present value.	Reproduction cost (5 yr. avg.).	Rep. cost less depreciation (5 yr. avg.).
Oklahoma City Division..		\$3,191,968	2,335,964	2,578,856	1,892,349
Muskogee	" ..	1,386,087	1,062,304	1,116,813	857,244
Enid	" ..	747,088	531,929	598,462	426,318
El Reno	" ..	415,966	316,391	366,224	279,353

I have furthermore assisted in examining the records of the Companies and have derived the amount of net construction additions to the several properties, as above listed for the period of September 30, 1920, to September 30, 1921, inclusive, and have determined therefrom the following values as of September 30, 1921:

		Reproduction cost new.	Present value.	Reproduction cost (5 yr. avg.).	Rep. cost less depreciation (5 yr. avg.).
Oklahoma City Division..		\$3,292,640	2,436,636	2,679,528	1,993,021
Muskogee	" ..	1,411,299	1,087,516	1,142,025	882,456
Enid	" ..	770,742	555,633	622,166	450,022
El Reno	" ..	419,835	320,200	370,093	283,222

As previous- stated, the values as above listed do not include Going Value, Working Capital, Cost of Money or any items whatsoever of an intangible nature.

In order to correct the valuations of March 31, 1920, of the several gas properties as above listed, to date of December 31, 1921, I assisted in determining therefrom the following values as of December 31, 1921:

348		Reproduction cost new.	Present value.	Reproduction cost (5 yr. avg.).	Rep. cost less depreciation (5 yr. avg.).
	Oklahoma City Division..	\$3,338,557	2,482,553	2,725,445	2,038,938
	Muskogee " ..	1,435,025	1,111,242	1,165,751	906,182
	Enid " ..	781,977	566,868	633,401	461,257
	El Reno " ..	426,500	326,925	376,757	289,887

As previously stated, the values as above listed do not include Going Values, Working Capital, Cost of Money or any items whatsoever of an intangible nature.

I furthermore assisted in determining the valuations of the aforesaid gas properties, predicated same on prevailing material and labor prices as of December 1921, and on additions of net construction expenditures for the period March 31, 1920 to December 31, 1921, inclusive, the *the* resulting values being as follows:

	Reproduction cost new.	Present value.	Reproduction cost (5 yr. avg.).	Rep. cost less depreciation (5 yr. avg.).
Oklahoma City Division..	\$2,592,743	1,942,828	3,242,657	2,417,266
Muskogee " ..	1,106,783	866,051	1,389,381	1,083,652
Enid " ..	627,896	457,770	786,289	570,299
El Reno " ..	334,548	256,828	421,983	323,279

The above values do not include Going Value, Working Capital, Cost of Money or any items whatsoever of an intangible nature.

ARTHUR H. KUHN.

Subscribed and sworn to before me this 26 day of Jan. A. D. 1922.

[SEAL.]

J. R. CLERRKIN,  
Notary Public.

My commission expires April 11, 1923.

Endorsed: Filed in District Court Feby. 16, 1922. Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

349 In the District Court of the United States for the Western District of Oklahoma.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

COUNTY OF COOK,  
*State of Illinois, ss:*

W. R. Emerson, being first duly sworn on oath deposes and says: I am thirty-six years of age and a resident of Oklahoma City, State of Oklahoma. I am secretary, treasurer and general auditor of the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company operating gas and electric utilities in the State of Oklahoma, and in such capacity have charge of the accounts and records of said companies.

The Corporation Commission of the State of Oklahoma in its Order No. 1995 in the matter of gas rates in Oklahoma City, El Reno, Enid and Britton, Oklahoma, states among other things as follows:

"Testimony shows (record page 156) that while the Company has on its books what it terms a depreciation reserve account, it maintains no depreciation reserve in fact, and the account has not been carried regularly; repair or maintenance bills not being charged to this account but to current expenses."

350 The Commission further added, with respect to depreciation, the following statement:

"As already stated, the record shows that the property involved in this case has been and is being maintained in condition to give service, all replacements and charges properly chargeable against depreciation reserve having been taken care of out of current revenues. The Company has been at liberty at all times to have carried a depreciation reserve in fact and to have made a complete and clear showing in support of the necessity thereof. But it has elected instead to handle the matter as above stated. In view of this fact, a consistent or valid claim can scarcely be made that an allowance for depreciation for the twelve months ending October, 1921, should be made."

The Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company do maintain and for a long time have maintained a depreciation reserve account, the credit balance of which,

as of October 31, 1921, was \$489,702.82. There was credited to this account during the year ending October 31, 1921 the sum of \$100,000.00, and there was charged against said account for replacements during the same period the sum of \$149,384.02. Of this amount \$12,108.12 was charged for replacement of gas property in the several divisions.

During the year ending October 31, 1921, there was charged to the maintenance accounts of the gas departments of the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company no cost of upkeep except such as may be properly classified as current repairs and maintenance, and, in my opinion, the amount so charged to the maintenance accounts is not in excess of what was required for current repairs and maintenance.

351 While the amounts charged to the depreciation reserve for replacement of property in the gas divisions of the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company for the year ending October 31, 1921, do not equal the average annual amount required in the long-run to cover depreciation and amortization, the inadequacy of such amounts has no bearing upon the actual amounts charged to maintenance and did not result in increasing the amount charged to maintenance accounts above what was actually required for current repairs and maintenance. The amounts which have been credited to and charged against the depreciation reserve account have been limited to a considerable degree by the earning situation and the difficulty of securing money during the last few years and, as a result thereof, a considerable amount of replacement has been deferred and will have to be made during future periods out of future earnings, and the replacements which have been made during the year ending October 31, 1921, and charged to the depreciation reserve are only those which the Company has been compelled to make in order to keep the property in condition to render satisfactory service. Furthermore, the replacements which must be made vary greatly in amount from year to year because of considerable variation in the life of the various units of property which make up the property as a whole. Fixed charges, on the other hand, must be met regularly as they fall due, and when the net earnings available fluctuate, due to variations in gross earnings or operating expenses or both, it is good business practice and in fact a necessity to vary the current charges for depreciation to meet the situation. Nevertheless, the average annual amount required for depreciation is not affected by such practice, and what is postponed or deferred in some years must be made up in others.

W. R. EMERSON.

Subscribed and sworn to before me this 8th day of February, 1922,  
A. D.

JOHN P. RYAN,  
Notary Public.

My Commission Expires July 11, 1923.

352 Endorsed: Filed in District Court on February 16, 1922.  
Arnold C. Dolde, Clerk. By F. G. Offutt, Deputy.

353 In the District Court of the United States for the Western District of Oklahoma.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE & ELECTRIC COMPANY, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

COUNTY OF COOK,  
*State of Illinois, ss:*

Edward N. Strait, being first duly sworn, on oath deposes and says: I have prepared and sworn to other affidavits in the above entitled matter, wherein I have shown among other things the annual net earnings required by the Oklahoma Gas & Electric Company in its gas business in its Oklahoma City, Enid and El Reno divisions and the amount of net earnings which it would obtain in said divisions under the present schedules of rates, assuming that the volume of business remained the same as for the years ending September 30, October 31, and November 30, 1921, and assuming that the gas be paid for under a gate rate consisting of 25¢ per 1,000 cubic feet for all gas received at the city gates, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion sold

354 to customers in excess of 500,000 cubic feet per month. I likewise showed the amount of net earnings which it would obtain in said divisions under the present rates assuming that the gas be paid for under a gate rate of 35¢ per 1,000 cubic feet for all gas received at the city gates, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet.

#### Valuation.

I have carefully read the affidavit of Edward D. Uhlendorf, dated January 24, 1922, in the above entitled manner, wherein he certified that in his opinion the fair valuation at the present time of the property of the Muskogee Gas & Electric Company used and useful in the distribution of natural gas in Muskogee, Oklahoma, is not less than \$1,191,723.

#### Net Earnings Necessary to Yield Fair Return.

The reports of decisions of the Corporation Commission of Oklahoma indicate that the Corporation Commission has uniformly allowed five per cent (5%) for depreciation and amortization of

natural gas distributing properties. This is in line with corresponding allowances made by other public service commissions.

During the year 1921, the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company were compelled to refinance in large measure, because a large part of their outstanding obligations fell due at that time. I have analyzed the cost of that financing and find that, after taking into account the marketing discounts and expense as well as the interest on the par value of the securities issued, the use of this borrowed capital costs the Oklahoma Gas &

Electric Company and the Muskogee Gas & Electric Company  
355 approximately 9.9 per cent per annum. The securities represented by the issues are twenty (20) year bonds and ten (10) year notes and hence the expense thereof is fixed for a long period of time. An allowance of ten (10) per cent for returns, in addition to depreciation and amortization, would afford only a slight margin above the cost of the borrowed capital.

I have ascertained the annual amount of net earnings required to equal 15 per cent for depreciation, amortization and interest on the fair valuation, set forth above to be \$178,758.

#### Net Earnings under Present Rates.

I have analyzed the operating expenses and gas sales of the Muskogee Gas & Electric Company for the years ending September 30, October 31 and November 30, 1921.

I have calculated the cost of gas received at the city gate from the Oklahoma Natural Gas Company under a gate rate of 25¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month, and at a gate rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet.

I have also calculated the cost gas received at the city gate from the Oklahoma Natural Gas Company under a gate rate of 35¢ per 1,000 cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000 cubic feet per month and at a rate of 20¢ per 1,000 cubic feet for said portion in excess of 500,000 cubic feet.

I have ascertained that the amount of net earnings which would be available for depreciation, amortization and returns assuming the same volume of business as for the years ending September 30, October 31, and November 30, 1921, if the present retail rates to the public and gate rates to the Oklahoma Natural Gas Company  
356 should be effective for a year. The amounts which would be so available are as follows:

#### A. Calculations Based on Gate Rate of 25¢ and 20¢.

##### Based on Conditions for—

Year	ending	September	30,	1921.....	\$36,518
"	"	October	31,	1921.....	38,335
"	"	November	30,	1921.....	37,434

## B. Calculations Based on Gate Rate of 35¢ and 20¢.

Based on Conditions for—

Year ending	September	30, 1921	.....	\$31,900
"	"	October	31, 1921	..... 34,799
"	"	November	30, 1921	..... 33,417

The derivation of these results are set for in detail below:

## Section I.

Based on Conditions for Year Ending September 30, 1921.

The present retail rates to the public effective in Muskogee, Okla-  
homa, comprising the Muskogee division are as follows:

A. When the Gate Rate is 25¢ and 20¢ as heretofore stated:

First 500,000 cu. ft. per month at 50¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

B. When the Gate Rate is 35¢ and 20¢ as heretofore stated:

First 500,000 cu. ft. per month at 63¢ net per 1,000 cu. ft.  
Excess " " " " 25 " " 1,000 "

A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the Muskogee division during the  
year ending September 30, 1921, was 1,206,245,000 cubic feet which  
was divided between the two rate classifications approximately as  
follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	851,246,000 cu.ft.
Excess " " " " .....	354,999,000 "
Total .....	1,206,245,000 "

Gross Revenues:

The gross revenues derivable from the same volume of sales under  
the present rates are as follows:

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851,246 M cu. ft at 50¢ per M.....	\$425,623
354,999 " " " 25 " " .....	88,750
Total Gross Gas Revenues.....	514,373

Operating Expenses:

The amount of gas lost and unaccounted for in distributing is  
approximately 20 per cent. The amount of gas required at the city

gate to furnish to customers the amount of gas sold during the year ending September 30, 1921, is therefore 1,507,806,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for by the Oklahoma Gas & Electric Company at the rate of 25¢ per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be as follows:

1,152,807 M cu. ft. at 25¢ per M.....	\$288,202
354,999 " " " 20 " ".....	71,000

Total Cost of Gas.....	359,202
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Other operating expenses for the year ending September 30, 1921, exclusive of depreciation, amortization and returns amounted to.....	\$118,653
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Total operating expenses would under present gate rates therefore be.....	\$477,855
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Amount Available for Depreciation, Amortization, and Returns.

There would be available for depreciation, amortization and returns, under present rates, \$36,518.

#### B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 63¢ instead of 50¢ per 1,000 cubic feet sold for the first 500,000 cubic feet per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cubic feet for all gas received by the company, except that portion which equals the amount sold to customers in excess of 500,000 cubic feet per month, the results are as follows:

#### Gross Revenues:

851,246 M cu. ft. at 63¢ per M.....	\$536,285
354,999 " " " 25 " ".....	88,750

Total Gross Revenues.....	625,035
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## Operating Expenses:

## Cost of Gas:

1,152,807 M cu. ft. at 35¢ per M.....	\$403,482
354,999 " " " 20 " " .....	71,000

Total Cost of Gas.....	474,482
Other Operating Expenses.....	118,653

Total Operating Expenses.....	593,135
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Amount Available for Depreciation, Amortization and Returns,  
\$31,900.

## Section II.

Based on Conditions for Year Ending October 31, 1921.

## A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the Muskogee division during the year ending October 31, 1921, was 1,158,920,000 cubic feet, which was divided between the two rate classifications approximately as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	849,228,000 cu.ft.
Excess " " " " .....	309,692,000 "
Total .....	1,158,920,000 "

## Gross Revenues:

The Gross revenues derivable from the same volume of sales under the present rates are as follows:

849,288 M cu. ft. at 50¢ per M.....	\$424,644
309,692 " " " 25 " " .....	77,423

Total Gross Revenues.....	502,067
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## Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending October 31, 1921, is therefore 1,448,850,000 cubic feet.

Under the gate rate order all of this, except that portion which  
359 is delivered to customers in excess of 500,000 cubic feet per month, is paid for by the Oklahoma Gas & Electric Company at the rate of 25¢ per 1,000 cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be as follows:

1,138,958 M cu. ft. at 25¢ per M.....	\$284,739
309,692 " " " " 20 " ".....	61,938

Total Cost of Gas.....	346,677
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Other operating expenses for the year ending October 31, 1921, exclusive of depreciation, amortization and returns amounted to.....	\$117,055
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Total operating expenses would under present gate rates therefore be.....	\$463,732
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Amount Available for Depreciation, Amortization, and Returns.

There would be available for depreciation, amortization and returns, under present rates, \$38,335.

#### B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 63¢ instead of 50¢ per 1,000 cubic feet sold for the first 500,000 cubic feet per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cubic feet for all gas received by the company, except that portion which equals the amount sold to customers in excess of 500,000 cubic feet per month, the results are as follows:

##### Gross Revenues:

849,228 M cu. ft. at 63¢ per M.....	\$535,014
309,692 " " " " 25 " ".....	77,423

Total Gross Revenues.....	612,427
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##### Operating Expenses:

###### Cost of Gas:

1,138,958 M cu. ft. at 35¢ per M.....	\$398,635
309,692 " " " " 20 " ".....	61,938

Total Cost of Gas.....	460,573
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Other Operating Expenses.....	117,055
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Total Operating Expenses.....	577,628
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Amount Available for Depreciation, Amortization and Returns, \$34,799.

## Section III.

Based on Conditions for Year Ending November 30, 1921.

A. Calculations Based on Gate Rate of 25¢ and 20¢.

The total amount of gas sold in the Muskogee division during the year ending November 30, 1921, was 1,186,246,000 cubic feet, which was divided between the two rate classifications approximately as follows:

	Classification.	Amount of gas sold.
First 500,000	cu. ft. per month.....	854,655,000 cu. ft.
Excess	" " " " .....	331,591,000 "
Total	.....	1,186,246,000 "

Gross Revenues:

The gross revenues derivable from the same volume of sales under the present rates are as follows:

854,655 M cu. ft. at 50¢ per M.....	\$427,328
331,591 " " " " 25 " " .....	82,898
Total Gross Revenues.....	510,226

Operating Expenses:

The amount of gas lost and unaccounted for in distribution is approximately 20 per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending November 30, 1921, is therefore 1,482,808,000 cubic feet. Under the gate rate order all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for by the Oklahoma Gas & Electric Company at the rate of 25¢ per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20¢ per M cubic feet.

The cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rates would be as follows:

1,151,217 M cu. ft. at 25¢ per M.....	\$287,804
331,591 " " " " 20 " " .....	66,318
Total Cost of Gas.....	354,122
Other operating expenses for the year ending November 30, 1921, exclusive of depreciation, amortization and returns amounted to.....	118,670
361 Total operating expenses would under present gate rates therefore be.....	\$472,792

## Amount Available for Depreciation, Amortization, and Returns.

There would be available for depreciation, amortization and returns, under present rates, \$37,434.

## B. Calculations Based on Gate Rate of 35¢ and 20¢.

Following the same method of calculation but using a rate of 63¢ instead of 50¢ per 1,000 cubic feet sold for the first 500,000 cubic feet per month, and a gate rate of 35¢ instead of 25¢ per 1,000 cubic feet for all gas received by the company, except that portion which equals the amount sold to customers in excess of 500,000 cubic feet per month, the results are as follows:

## Gross Revenues:

854,655 M cu. ft. at 63¢ per M.....	\$538,433
331,591 " " " " 25 " ".....	82,898
Total Gross Revenues.....	621,331

## Operating Expenses:

## Cost of Gas:

1,151,217 M cu. ft. at 35¢ per M.....	\$402,926
331,591 " " " " 20 " ".....	66,318
Total Cost of Gas.....	469,244
Other Operating Expenses.....	118,670
Total Operating Expenses.....	587,914

Amount Available for Depreciation, Amortization and returns, \$33,417.

EDWARD N. STRAIT.

Subscribed and sworn to before me this 20th day of February, 1921, A. D.

[Seal of John P. Ryan, Notary Public, Cook County, Ill.]

JOHN P. RYAN,  
Notary Public.

My commission expires July 11, 1923.

Endorsed: Filed in District Court on February 25, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

362

No. 12. Crutcher. No. 12.

In the District Court of the United States for the Western District of Oklahoma.

No. 502. Equity.

OKLAHOMA GAS AND ELECTRIC Co., a Corporation, and MUSKOGEE GAS AND ELECTRIC Co., a Corporation, Complainants,

VS.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants.

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

Wm. H. Crutcher being first duly sworn, says: I am Superintendent of the Gas Department of the Oklahoma Gas and Electric Company and have charge of the operation of the gas department of the Oklahoma Gas and Electric Company in the cities of Oklahoma City, El Reno, and Enid, and the towns of Bethany, Britton and Yukon, and also have charge of the operation of the gas department of the Muskogee Gas and Electric Company in the City of Muskogee, Oklahoma, having occupied such position for the past four years; that prior to my employment with the Oklahoma Gas and Electric Company I was, for fifteen years, General Superintendent of the Kentucky Heating Company at Louisville, Kentucky, and was also Superintendent of the Gas Department of the Louisville Gas and Electric Company at Louisville, Kentucky.

I have just completed a study of our records of the distributing mains and services in Oklahoma City in order to arrive at an estimate of the amount of gas lost during last year through leakage in pipes which are the property of the consumers and pipes which are under the control of this company. I find that in Oklahoma City this company has a total of 1,085,385 lineal feet of various sizes of pipe mains.

363 If the various sizes are reduced to a 3-inch basis, we would have 1,849,716 feet.

I find that the company has 331,168 lineal feet of service pipe which, if reduced to a 3-inch basis, would amount to 146,464 feet.

We have no records of the amount of pipe which should be classed as consumers' services—i. e., the service pipe from the curb cock to the meter. This pipe is laid by the consumer and it is the duty of the consumer to maintain it. A fair estimate of the amount of pipe would be 50 feet per service for each customer. As we had 16,896 services connected to our mains on December 31st, 1921, this would indicate that there are 844,800 lineal feet of services inside of the consumers' property and under the control of the consumers. If reduced to a 3-inch basis, this pipe will amount to 353,116 feet.

We have no data as to the amount of loss which can be attributed to leaks in service pipes, but from my own experience in the past and from the experience of others who have made a close study of this question, I am of the opinion that not less than fifty per cent of the total leakage is due to leaks in the service pipes, somewhere from the main to the meter cock.

From the above figures I conclude that approximately seventy per cent of this service pipe is under the control of the company's customers and that approximately thirty per cent is under the control of the company.

It is also my opinion that not less than thirty-five per cent of our unaccounted for gas is due to leakages from pipes inside the consumers' premises and under the control of the consumers; that fifteen per cent of the unaccounted for gas is due to loss from service pipes from the main to the curb cock and that fifty per cent is due to loss from the mains themselves.

During the year ending December 31st, 1921, after applying a correction to the amount of gas recorded by the meters of the  
364 Oklahoma Natural Gas Company, we received at our city gates at Oklahoma City, 4,023,039 M cubic feet. We accounted for, in sales to consumers, 3,238,942 M cubic feet, leaving a loss and unaccounted for of 784,097 M cubic feet, which is 19.49 per cent of the total amount of gas received at our city gates. Of this loss, 50 per cent, or 392,000 M cubic feet can be attributed to losses from our own distributing mains; 15 per cent, or 117,000 M cubic feet can be attributed to losses from the services in the streets and thirty-five per cent, or 274,000 M cubic feet can be attributed to losses from service pipes inside of the property line and under the control of the consumer.

The above figures apply to Oklahoma City alone, and while I have not made an analysis of the conditions in Muskogee, Enid, El Reno, Yukon, Britton and Bethany, I have no doubt whatever but that the same condition obtains in all of the cities and towns that we are serving.

It is more than likely that the amount of leakage from services inside the property lines may be in larger proportion than the figures given above, due to the fact that for the last seven years we have made a practice of painting and wrapping all of our service pipe in the streets, whereas the pipe in the consumers' property is not so protected.

During the past few months we have been making inspections of the houses and service pipes within the customers' premises and have found numerous leaks.

Further affiant saith not.

WM. H. CRUTCHER.

Subscribed and sworn to before me this 24th day of February, 1922.

[SEAL.]

HELEN THORNTON,  
Notary Public.

My Commission Expires Nov. 29, 1923.  
Filed in District Court Feb. 25, 1922.

Endorsed: Filed in District Court on February 25, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

365 In the District Court of the United States for the Western District of Oklahoma.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

STATE OF OKLAHOMA,  
*County of Oklahoma, ss:*

W. R. Emerson, being first duly sworn on oath deposes and says: I am thirty-six years of age and a resident of Oklahoma City, State of Oklahoma. I am secretary, treasurer and general auditor of the Oklahoma Gas and Electric Company and the Muskogee Gas and Electric Company, operating gas and electric utilities in the State of Oklahoma, and in such capacity have charge of the accounts and records of said companies.

The Corporation Commission of the State of Oklahoma in its Order No. 1995 in Cause No. 4302 in the matter of the gas rates in Oklahoma City, El Reno, Enid and Britton, Oklahoma, states among other things, as follows:

"The company claims as an operating expense two and one-half (2½%) per cent on gross earnings paid each year to an engineering and management corporation. This item the Commission, in arriving at the rate fixed, has disallowed, for the reason that the evidence in this case fails to show any services of value to the local company rendered by such management company."

366 I have read the affidavit of Mr. Arthur S. Huey, subscribed and sworn to on the 7th day of February, 1922, before A. Louis Flynn, Notary Public of Cook County, Illinois, which said affidavit I understand is to be used in the Equity Cause No. 502 in the Federal Court. On page 21 of that affidavit appears the following:

"The books of the Oklahoma Gas and Electric Company show the following charges in the operating accounts from charges made by the Byllesby Engineering and Management Corporation for the year

1921, which charges are the only charges which affect the net income of the Oklahoma Gas and Electric Company:

One-half of supervision fee.....	\$65,760.67
Services, traveling, etc.....	14,867.34
<b>Total.....</b>	<b>\$80,628.01"</b>

The above statement is correct as shown by the books of the company of which I have charge.

The item—One-half of supervision fee—\$65,760.67 was distributed, as follows:

Electric Utilities .....	\$36,432.61
Gas Utilities .....	29,328.06

being distributed to the Gas Utilities, as follows:

El Reno Gas Department.....	\$1,511.38
Enid Gas Department.....	2,976.06
Muskogee Gas Department.....	6,582.09
Oklahoma City Gas Department.....	18,258.53
	<hr/>
	\$29,328.06

Of the item—Services, Traveling Expenses, etc., amounting to \$14,867.34—there was distributed to the Electric Utilities \$9,076.24 and to the Gas Utilities \$5,791.10. This item of \$5,791.10 being distributed to the Gas Utilities of El Reno, Enid, Muskogee and Oklahoma City in proportion to the services pertaining to that utility.

The supervision fee referred to in Mr. Huey's affidavit represents all the charges in the operating accounts from charges made by the Bylesby Engineering & Management Corporation for the year 1921 and that these charges, which aggregate \$80,628.01, represent charges for the entire Oklahoma Gas and Electric Company; I mean  
367 by that, all cities and towns comprising the system, which  
are:

Bristow, Beggs, Bixby, Jenks, Kiefer, Mounds, Glick, Drumright, El Reno—Gas & Electric, Enid—Gas & Electric, Bison, Covington, Garber, Dover, Hennessey, Waukomis, Muskogee—Gas & Electric, Boynton, Haskell, Ft. Gibson, Oklahoma City—Gas & Electric, Britton—Gas & Electric, Moore, Norman, Yukon, Sapulpa and the Oil Fields.

The Commission in its said Order No. 1995 finds that the company has collected from consumers for extensions under contracts between the company and consumers certain amounts of money between July 1, 1914 and February 1, 1921, and the Commission holds the company is not entitled to a return upon property to the extent of the investments made under the contracts. The Commission also finds in said order that the company did not offer any figures touching the subject of such extensions prior to June 30, 1914, but finds from the figures furnished that 3 5/10 per cent of the additions and better-

ments to the plant since June 30, 1914 were made in this manner and applies the same percentage to additions and betterments made prior to said date.

Affiant states that the additions and betterments made by the company prior to June 30, 1914 were not made under similar contracts with the consumer but were made at the company's expense.

W. R. EMERSON.

Subscribed and sworn to before me this 23d day of February, 1922, A. D.

[Seal of Jane Heyman, Notary Public, Oklahoma Co., Okla.]

JANE HEYMAN,  
Notary Public.

My Commission Expires June 17, 1922.

Endorsed: Filed in District Court on February 25, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

368 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Equity.

OKLAHOMA GAS AND ELECTRIC Co., a Corporation, and MUSKOGEE GAS AND ELECTRIC Co., Complainants,

VS.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.,  
Defendants.

STATE OF OKLAHOMA,  
Muskogee County, ss:

A. B. Coryell being first duly sworn, says: I am General Superintendent of the Muskogee Electric Traction Company with Muskogee as the principal place of business. I have been with the company since the 15th of September 1921. Maintenance of the tracks, overhead equipment all came under my supervision and going over the lines, tracks and etc. It was my duty to see that the bond of the track was in good shape. I made an investigation of the tracks soon after I took charge of the business of the company and found the tracks in good condition and the bonds as a whole were well bonded. About the middle of December 1921 we put special men on this work and they have been engaged continuously since that time and will be engaged until the entire system has been thoroughly covered and all defective bonds replaced. It has been the practice of my company since I have been superintendent, when a broken rail or broken bond is discovered to have it repaired at the earliest practicable time. During the month of

January 1922, we discovered a ground wire leading from  
 369 the high tension, 13,000 volt line of the Muskogee Gas and  
 Electric Company attached to the rails of our track.

Further affiant saith not.

A. B. CORYELL.

Subscribed and sworn to before me this 25th day of February  
 1922.

[SEAL.]

LILLIAN E. HERNDON,  
*Notary Public.*

My Commission Expires January 10, 1926.

Endorsed: Filed in District Court Feb. 27, 1922.

Endorsed: Filed in District Court February 27, 1922. Arnold  
 C. Dolde, Clerk, by M. V. Haws, Deputy.

370 In the District Court of the United States for the Western  
 District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKO-  
 GEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.,  
 Defendants.

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

W. R. Emerson, being first duly sworn, on oath deposes and  
 says: I am thirty-five years of age, and a resident of the City of  
 Oklahoma City, in the State of Oklahoma, and am an accountant  
 by profession; I am the Treasurer of the Oklahoma Gas & Electric  
 Company, and also the Treasurer of the Muskogee Gas & Electric  
 Company; and also am the General Auditor for both of the said  
 companies; that for the year commencing October 1st, 1919, and  
 ending September 30th, 1920, in the City of Oklahoma City, and  
 the towns of Bethany, Britton and Yukon, the cost of gas was  
 \$1,116,063.91, and that the other operating expenses for the same  
 period of time were \$238,980.16, and that the Total receipts for  
 the same period of time were \$1,619,792.25, leaving Net Earnings  
 of \$264,748.18, and that in the City of El Reno, for the same period  
 of time, the cost of gas was \$92,351.45, the Operating Expenses  
 other than the cost of gas were \$29,991.63, and that the total re-  
 cepts for the same period of time were \$136,199.63, leaving Net  
 Earnings of \$13,856.55; that for the same period of time in the  
 City of Enid, the cost of gas was \$197,649.51; other Operating Ex-  
 penses were \$50,418.30, and the total receipts for the same period

of time were \$284,909.74, leaving net earnings of \$36,841.93, and that for the same period of time the cost of gas in the City of Muskogee was \$379,306.29, and that the other operating expenses amounted to \$107,209.09, and that the total receipts were \$590,003.86, leaving Net Earnings of \$103,488.48.

That for the period beginning October 1st, 1920, ending with September 30th, 1921, the cost of gas in the City of Oklahoma City was \$963,772.79, and that the other operating expenses were \$235,971.35 and that the total receipts for the same period of time were

\$1,412,650.50; leaving Net Earnings of \$212,906.36; that  
371 for the period beginning October 1st, 1920, ending with September 30th, 1921, the cost of gas in the City of El Reno was \$72,423.30; and that the operating expenses other than the cost of gas were \$34,876.99, and that the total receipts amounted to \$108,181.38, leaving net earnings of \$881.09; that for the period beginning October 1st, 1920 ending with September 30th, 1921, the cost of gas in the City of Enid was \$160,874.76, and that the other operating expenses amounted to \$58,260.65, and that the total receipts for the same period of time were \$235,455.77, leaving net earnings of \$16,320.86; that in the City of Muskogee, for the period beginning with October 1st, 1920, and ending with September 30th, 1921, the cost of gas was \$322,425.10, that the other operating expenses amounted to \$118,652.74, and that the total receipts for the same period of time were \$489,913.80, leaving net earnings of \$48,835.96.

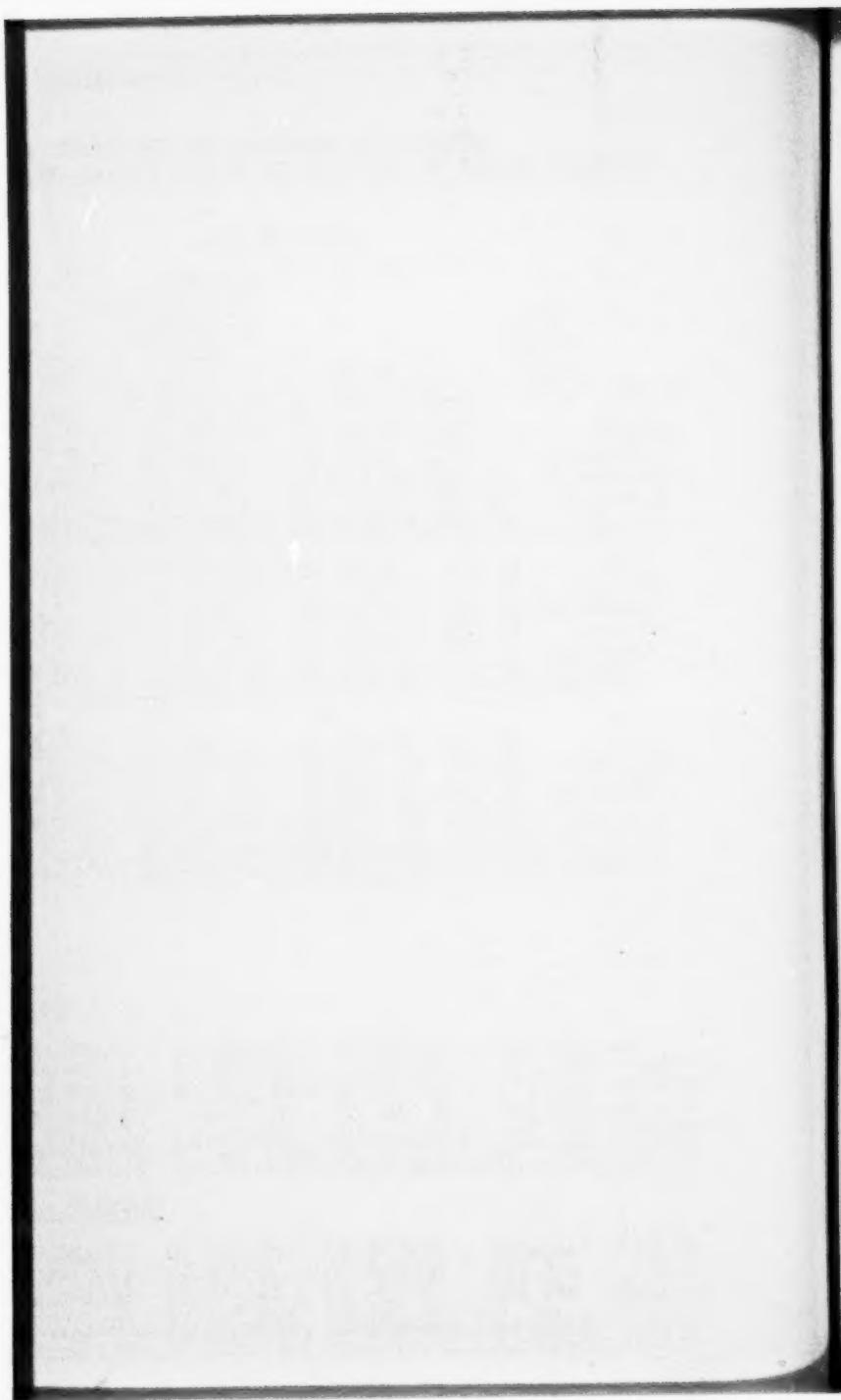
That the cost of gas under the contracts between the complainants and the Oklahoma Natural Gas Company, which were abrogated by order of the Corporation Commission of the State of Oklahoma on July 1st, 1921, and the cost of gas under the gate rate order established by the Corporation Commission of 25¢, and the other operating expenses, together with the total receipts for the months of July, August, September, October and November, 1921, are set forth in the following exhibit which is hereby made a part of this affidavit and attached hereto, and that under the said 25¢ gate rate for the said period of time beginning with July 1st, 1921, and up to and including November 30th, 1921, the Oklahoma Gas & Electric Company would, had it been compelled to pay said 25¢ gate rate have operated in the Oklahoma City Division at an actual loss of \$121,399.19, and in the City of El Reno at an actual loss of \$17,505.92, and in the City of Enid, at an actual loss of \$21,764.26, and in the City of Muskogee at an actual loss of \$59,732.06. That under the said gate rate for the same period of time, the complainants herein would have received a total of \$220,401.43 less than nothing to apply towards depreciation amortization and return upon the property used and useful by it in distributing natural gas in said cities and towns.

That if the 35¢ gate rate authorized by this court had been in effect for the same period of time, the net result to the complainants would have been as is set forth in the last column of the exhibit attached hereto and made a part hereof. That the result of

**OKLAHOMA GAS AND ELECTRIC COMPANY.  
ALL DIVISIONS.**

**SCHEDULE OF EARNINGS AND EXPENSES-GAS UTILITY JULY 1, 1921 to NOVEMBER 30, 1921.  
SHOWING EFFECT OF 25¢ GATE RATE AND ACTUAL OPERATING DEFICIT WITH COMPARISON OF 35¢ GATE RATE APPLIED TO SAME PERIOD.**

Cost of Gas.			EL RENO DIVISION					COMPARISON ON 35¢ Gate Rate		
Month	Con- sump- tion M.Cu.Ft	Gross Earnings	Contract (Figures used in monthly reports to Comm. this period)	Add increase due to 25¢ Gate Rate	Cost of Gas 25¢ Gate rate	Other operating expenses	Total operating expenses	Actual operating deficit (basis 25¢ Gate rate)	Add increase due to from 25¢ to 35¢ Gate rate	Amount operating deficit would have been on 35¢ Gate rate
July	16,935	3,365.76	2,351.47	1,882.28	4,233.75	2,758.03	6,991.78	3,626.02	1,693.50	5,319.52
August	16,723	3,623.75	2,445.36	1,735.32	4,180.75	2,660.18	6,840.93	3,217.18	1,672.30	4,889.48
September	17,242	3,915.01	2,635.18	1,675.32	4,310.50	2,952.05	7,262.55	3,347.54	1,724.20	5,071.74
October	25,456	4,943.04	3,283.26	3,080.74	4,364.00	3,303.37	9,667.37	4,744.83	2,545.60	7,229.93
November	36,983	9,913.32	6,504.75	2,741.00	9,245.75	3,258.42	12,504.17	2,592.85	3,698.30	6,229.15
TOTALS	113,339	25,760.88	17,220.02	11,114.73	28,334.75	14,932.05	43,266.80	17,505.92	11,333.90	28,839.62
ENID DIVISION										
July	22,011	6,342.03	4,282.68	1,220.07	5,502.75	4,829.86	10,332.61	3,990.58	2,201.10	6,191.68
August	21,716	7,276.90	4,917.14	511.86	5,429.00	4,520.65	9,949.65	2,672.75	2,171.60	4,844.35
September	22,933	6,088.61	4,099.50	1,633.75	5,733.25	4,826.57	10,559.82	4,471.21	2,293.30	6,764.57
October	41,485	8,293.47	5,600.54	4,770.71	10,371.25	4,709.89	15,081.14	6,787.67	4,148.50	10,936.17
November	67,744	17,991.02	12,034.63	4,901.37	16,936.00	4,897.07	21,833.07	2,542.03	6,774.40	10,616.40
TOTALS	175,889	45,992.03	30,934.49	13,037.76	43,972.25	23,784.04	67,756.29	21,764.26	17,588.90	39,353.16
MUSKOGEE DIVISION.										
July	78,578	17,784.18	11,856.12	6,288.38	18,144.50	10,507.16	28,651.11	10,867.48	7,257.80	18,125.28
August	70,922	16,868.46	11,245.64	6,484.86	17,730.50	9,498.91	27,229.41	10,260.95	7,092.20	17,453.15
September	68,003	15,210.06	10,140.04	6,860.71	17,000.75	9,355.84	26,356.59	11,146.53	6,800.30	17,446.83
October	96,993	20,779.82	13,853.21	10,395.04	24,248.25	10,495.93	34,744.18	13,964.36	9,699.30	23,663.66
November	181,270	43,353.02	28,908.03	16,435.49	45,317.50	11,428.26	56,745.76	13,292.74	18,127.00	31,519.74
TOTALS	489,766	113,995.54	75,997.02	46,444.48	122,441.50	51,286.10	173,727.60	59,722.06	48,976.60	108,708.66
OKLAHOMA CITY DIVISION.										
July	136,510	41,031.44	27,855.45	6,272.05	34,127.50	21,073.90	55,201.40	14,169.96	13,651.00	27,830.92
August	129,734	37,974.06	25,748.06	6,685.44	32,433.50	19,968.02	52,401.52	14,427.46	12,973.40	27,400.86
September	135,243	37,523.78	25,444.28	8,366.47	33,810.75	20,893.66	54,704.41	17,182.63	13,524.30	30,704.93
October	230,585	48,080.65	32,541.47	25,104.78	57,646.25	34,619.39	92,265.64	44,184.99	23,058.50	67,243.49
November	457,286	104,993.32	72,079.53	42,243.97	114,321.50	22,107.97	136,429.47	31,436.15	45,728.60	77,164.25
TOTALS	1,089,358	269,603.25	183,668.79	88,670.71	272,339.50	118,662.94	391,002.44	121,399.19	108,935.80	230,334.99
SUMMARY OF DIVISIONS.										
El Reno	113,339	25,760.88	17,220.02	11,114.73	28,334.75	14,932.05	43,266.80	17,505.92	11,333.90	28,839.62
Enid	175,889	45,992.03	30,934.49	13,037.76	43,972.25	23,784.04	67,756.29	21,764.26	17,588.90	39,353.16
Muskogee	489,766	113,995.54	75,997.02	46,444.48	122,441.50	51,286.10	173,727.60	59,722.06	48,976.60	108,708.66
Okla. C.	1,089,358	269,603.25	183,668.79	88,670.71	272,339.50	118,662.94	391,002.44	121,399.19	108,935.80	230,334.99
TOTALS	1,868,352	455,351.70	307,820.32	159,267.68	467,088.00	208,665.13	675,753.13	210,401.43	186,835.20	407,236.63



372 the operation of your complainants throughout the state of Oklahoma under the 35¢ gate rate for the period of time mentioned in this affidavit would have shown that your complainants would have received \$407,236.63 less than nothing to apply towards depreciation, amortization and return on the property used and useful by them in distributing natural gas.

That the totals set forth in the various columns on said exhibit are taken from the books and records of the complainants and are true and correct.

W. R. EMERSON.

Subscribed and sworn to before me this 31st day of December, 1921.

[SEAL.]

T. J. SARTAIN,  
*Notary Public.*

My commission expires August 18th, 1925.

Endorsed: Filed in District Court Feby. 27, 1922.

(Here follows schedule of earnings and expenses, marked page 373.)



Subscribed and sworn to before me this 24th day of February, 1922.

My Commission expires 1-1-1923.

J. S. GRAM.

376 Endorsed: Filed in District Court on February 25, 1922.  
Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

377 In the District Court of the United States for the Western  
District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

*Affidavit.*

STATE OF OKLAHOMA,  
Oklahoma County, ss:

Edward F. McKay, being first duly sworn on oath, deposes and says: I have read carefully the affidavit of E. N. Strait in this proceeding, dated February 8, 1922, wherein said E. N. Strait sets forth what purport to be net earnings required to equal 15 per cent for depreciation, amortization and return upon the minimum fair valuation determined by Edward D. Uhlenborff and set forth by him in his affidavit of January 24, 1922, in this matter, for the properties of the Oklahoma City Division, Muskogee Division, Enid Division and El Reno Division of the complainant companies.

I have heretofore on February 24, 1922, made affidavit with reference to the proper and reasonable rate of return allowed and allowable on the properties of complainant companies in the respective divisions referred to.

I have heretofore on same date, also made affidavits with reference to proper and reasonable rate of leakage allowed and allowable in connection with operation of the properties of the complainant companies in the respective divisions referred to.

I have heretofore, on same date, also made affidavits with reference to the proper and reasonable rate basing valuation of the properties of the complainant companies in the respective divisions referred to, as revealed by the sworn reports of said companies furnished the Corporation Commission of Oklahoma in the regular course of business.

378 I find that the conclusions advanced by affiant E. N. Strait with reference to net earnings required in the operation of the properties

of the various divisions of the complainants' properties referred to are based upon the following factors:

1. An excessive rate of return upon the properties used and useful in furnishing gas to the consumers of the complainant companies in the respective divisions referred to,
2. An excessive cost of gas in the properties of the respective divisions, due to excessive loss and waste of gas through leakage in the distribution system of the respective divisions,
3. An excessive property valuation purporting to be the present valuation of the property used and useful in giving service to the consumers furnished by the complainant companies in the respective divisions referred to.

More particularly:

Affiant E. N. Strait predicates his conclusions as to necessary net earnings upon a rate of return of ten per cent, whereas eight per cent is the reasonable and proper allowance therefor.

Affiant Strait predicates his conclusions as to necessary net earnings upon a cost of gas assuming leakage of 20 per cent in the properties of the various divisions referred to, whereas any leakage in excess of 10 per cent involves excessive and unjustifiable loss and waste of gas.

Affiant Strait predicates his conclusions as to necessary net earnings upon a rate basing value in the case of each division of the complainant companies' properties in excess of the actual present value of the property used and useful in affording service to the consumers, paid for by complainant companies and not compensated for by depreciation heretofore earned and paid.

For all of which reasons, more fully set forth in the affidavits of this affiant referred to, this affiant declares the net earnings alleged in the affidavit of said E. N. Strait as necessary and required, to be excessive, unnecessary and not required, and declares said affidavit of E. N. Strait to be based on erroneous assumptions.

EDWARD F. MCKAY,  
*Affiant.*

Subscribed and sworn to before me this 24 day of February, 1922.

[Seal of John S. Gram, Notary Public, Oklahoma Co., Okla.]

J. S. GRAM,  
*Notary Public.*

My Commission expires 1-1-1923.

379      Endorsed: Filed in District Court on February 25, 1922.  
Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

380 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

*Affidavit.*

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

Edward F. McKay, being first duly sworn on oath, deposes and says: I have read carefully the affidavit of Edward M. Strait in this proceeding, dated February 8, 1922, in which said Edward N. Strait states, among other things, that during the year 1921 the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company were compelled to refinance in large measure, because a large part of their outstanding indebtedness fell due at that time; that he had analyzed the cost of that financing and found that, after taking into account the marketing discounts and expense, as well as the interest on the par value of the securities issued, the use of this borrowed capital costs the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company approximately 9.9 per cent per annum; that the securities represented by the issues are twenty (20) year bonds and ten (10) year notes and that hence the expense thereof is fixed for a long period of time; and that an allowance of ten percent for returns in addition to depreciation, would afford only a slight margin over the cost of the borrowed capital.

381 The orders of the Corporation Commission giving rise to this proceeding make allowance of depreciation of five percent, which the affiant Strait alleges is in line with corresponding allowance for natural gas properties made by other public service commissions.

The same orders make allowance of eight percent for return upon the property used and useful in supplying gas to the consumers of the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company, which allowance, likewise, is in line with corresponding allowance for natural gas properties made by other public service commissions.

In the presentation of their evidence in the hearings before the Corporation Commission of Oklahoma as a result of which the orders giving rise to these proceedings were issued, the complainants re-

ferred to but did not present in evidence a letter purporting to explain all facts and circumstances surrounding the alleged necessity for the refinancing program referred to in the affidavit herein of said E. N. Strait. Said letter was written August 30, 1921, to the Chairman of the Corporation Commission of Oklahoma, by one J. J. O'Brien, presumably of Chicago, Illinois. Said letter was referred to frequently by counsel for complainants in the hearing before the Corporation Commission in which the orders giving rise to these proceedings were issued, but the writer thereof was at no time offered as a witness in the case, in order that he might be questioned or cross-examined by counsel for the Corporation Commission, and all allegations in said letter set forth touching upon the alleged necessity for said program of refinancing are wholly unsupported by any statements on oath, or otherwise.

The principal conclusion sought to have been interjected into the hearing before the Corporation Commission by the frequent references of counsel for complainants to said O'Brien letter, to-wit: that a rate of return higher than that allowed by the Corporation Commission is in fact justified by reason of said program of refinancing, is sought to be established in this court in this proceeding by the affidavit of the said E. N. Strait, already referred to.

382 That such conclusion is not justified by the facts in the case and that the Corporation Commission acted properly and in proper protection to the interests of the public in rejecting such conclusion and refusing complainants the benefit thereof, is proved by said O'Brien letter, which states, among other things, the following:

"In this connection your attention is especially called to the provisions of the Trust Deed found on pages 74 and 75 of the printed copy made a part hereof, providing for the calling and retirement of the securities issued under its terms, and enabling the company to finance in the future at lower rates should interest rates recede."

Efforts of the Chairman of the Corporation Commission to ascertain from the witness, E. N. Strait, affiant in this proceeding, at the hearing before the Corporation Commission, what portion of the securities issued in 1921, if any, went to brokers or buyers affiliated directly or indirectly with the complainant companies or their parent or holding companies, and what portion, if any, went into the hands of adverse holders, were wholly unavailing.

Said witness, E. N. Strait, in the hearing before the Corporation Commission, did, however, after the Chairman had said that the record should show the financial program to have been a necessary transaction and that the securities passed into the hands of adverse holders and not to the holding companies and that the Commission realized that financing was being done at the time of the hearing (December 1921) on a great deal better terms, testify that no one knew at the time of the refinancing transaction that conditions would become better so soon. In answer to the direct question whether conditions were not, in fact, better, the witness Strait answered: "Generally they are." When the same witness was asked whether the bonds

had a provision whereby they could be retired in the event money rates should decrease, counsel for the complainant replied, for the witness, that the Deed of Trust had that provision under certain conditions.

Section 1 of Article IV of the Trust Deed prescribes conditions for the redemption of Series "A" bonds of the complainant at 383 any time outstanding thereunder at the option of said company; Section 2 prescribes the method whereby such redemption may be accomplished, and Section 3 provides that bonds of series other than Series "A" may be made subject to redemption in the same manner at such price or prices as the board of directors of the complainant company may determine.

In view of the facts hereinabove set forth the claim of the affiant E. N. Strait that the refinancing program referred to in his affidavit justifies an allowance of ten percent for return, is, in the judgment of this affiant, untenable; and the finding of the Corporation Commission that "In the face of the foregoing testimony relating to the refinancing program the Commission cannot approve, as a proper burden upon the public that this Company serves, the tremendous interest charges claimed," is, in the judgment of this affiant, a reasonable and proper finding and conclusion.

As a result of such conclusion the Commission restricted the allowance for return upon the property used and useful to eight percent which, in the judgment of this affiant, is a reasonable and sufficient allowance in this case.

As shown by another affidavit in this case by this affiant, the rates allowed by the Corporation Commission against which complainants herein protest, will, in fact, yield a substantial surplus above the return formally allowed. Such surplus the Commission has assumed the complainant companies would use in bettering the physical condition of their properties and reducing the gross waste and loss of gas due to leakage in such other affidavit more fully discussed.

EDWARD F. McKAY.

Subscribed and sworn to before me this 24 day of February, 1922.

[SEAL.]

J. S. GRAM,  
*Notary Public.*

My Commission expires 1-1-1923.

384 Endorsed: Filed in District Court on February 25, 1922.  
Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

385 In the United States District Court for the Western District of Oklahoma.

No. —.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

VS.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al., Defendants.

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

E. F. McKay of lawful age, on his oath, says: As an Attorney of many years' experience, in the employ of the Corporation Commission of Oklahoma, I have examined the first Amended Petition filed in the above numbered and entitled cause on behalf of the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company; I have particularly examined the allegations of such First Amended Bill of complaint in those particulars thereof alleging the values of the gas distributing plants of the complainants in the several cities and towns named therein; I attended all except one of the hearings in Cause No. 4142 before the Corporation Commission of Oklahoma, in which the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company were seeking a valuation of their gas and electric utilities properties for the avowed purpose of furnishing a basis upon which they might finance or re-finance their properties, and in the hearings in said cause, observed and know the source from which the figures of values contained in said First Amended Bill of complaint were derived; such figures are based upon purported valuation of said properties respectively, made by an — under

386 the supervision of Edward D. Uhlendorff, a engineer in the employ of the Byllesby Engineering & Management Corporation. The said Uhlendorff is the same Uhlendorff who has prepared an affidavit which has been filed in this cause in support of the allegations respecting values made in such First Amended Bill of complaint. The figures contained in the affidavit of said Uhlendorff are substantially the same figures produced and testified to by said Uhlendorff in the hearing in said Cause No. 4142, with consideration given to additions to the distributing plants of the complainants since the compilation of the original figures.

This data is substantially the same data that was adduced by the complainants through Mr. Uhlendorff in evidence before the Corporation Commission of Oklahoma in said cause.

One E. B. Black, a Consulting Engineer of Kansas City, Mo., testified in said cause on behalf of the City of Enid, and his testimony was by him stated to be applicable to the inventories and exhibits introduced in said hearing respecting the values of the prop-

erties and the methods of reaching the values of the properties adopted by said Uhlendorff in the other cities and towns served by the complainants. The testimony of said E. B. Black having been given in said cause on January 7th or 8th, 1921, and at such time it was arranged that he should thereafter reduce to writing his comments upon the methods which Mr. Uhlendorff had testified to having resorted to in reaching and determining the values by him placed upon the several properties; said Black thereafter and in a communication dated January 17, 1921, did address to the Corporation Commission of Oklahoma, pursuant to the arrangement aforesaid, a communication in which he dealt with and stated the theories adopted by Mr. Uhlendorff and his objections thereto and comments thereon. In said communication the statements made by Mr. Black as to the theories and methods adopted by said Uhlendorff in obtaining the valuations aforesaid, and applying labor and material costs to the items of physical properties embraced within the inventories, are correct.

387 I certify that the following is a true and correct copy of the letter of January 17, 1921 aforesaid, of Mr. Black's, omitting therefrom the exhibits and charts submitted in connection therewith as the said letter of January 17th, 1921, is and appears among the records of the Corporation Commission of Oklahoma in said cause.

388

January 17, 1921.

"Oklahoma Corporation Commission,  
Oklahoma City, Oklahoma.

GENTLEMEN:

Submitted herewith is a memorandum in connection with the valuation of the gas and electric properties of the Oklahoma Gas & Electric Company at Enid, Oklahoma, as requested by you at the time of the hearing on January 8. At this hearing I testified with respect to some of the outstanding features of these valuations, and this memorandum goes more into detail with respect to my testimony as well as into detail with respect to some items on which I did not testify at the hearing.

The valuations presented by the Oklahoma Gas & Electric Company are made as of different dates, the electric property valuation being dated September 30, 1920, and the gas property valuation March 31, 1920. In each valuation the Company's engineers have proceeded to find a reproduction cost new on the above dates, and have then made a valuation based on the five-year average prices preceding those dates, by applying to the 1920 valuations, the per cent that the five-year average prices were of the 1920 price.

In arriving at this five-year average valuation it has been necessary for the Company to separate all accounts into per cents of labor and materials, and to then apply the per cents that the five-year average price of labor and materials was of the 1920 price, to the

per cents of labor and materials entering into a given account, in order to finally arrive at a per cent to apply to the total of the account on the date of the appraisal.

On January eight, I stated to the Commission that lack of time had precluded the checking of the inventory presented by the engineers for the Company, as well as the checking of many of the prices used in arriving at the 1920 valuations, but that I had arrived at several objections to the theory of the valuations, as well as to the application of the figures of the Company's engineer. Briefly summarized these objections are as follows:

(1) The use of a valuation based on prices over a five-year period from October 1, 1915, to September 30, 1920, in the case of the electric property, and from April 1, 1915, to March 31, 1920, in the case of the gas property, is not a proper basis for rate making. These five-year periods cover the war period only and make no allowance for the fact that a considerable per cent of these properties was constructed at lower price levels, or for the fact that during the period of application of rates based on the proposed valuation the general price level of materials will be lower than during the five-year periods under consideration. In my opinion the proper basis for this valuation would be a valuation of the property at the end of the pre-war price period, plus all property added during the war period at the price paid therefor; in the absence of information on which such a valuation could be made, the prices used should be based on at least a ten-year period preceding the date of valuation.

(2) The five-year average prices in Chart A, page 10, of the gas appraisal, based on ten specific items entering into the construction of the gas property, and Chart A, page 6, of the electric appraisal, based on twenty-three specific items entering into the construction of the electric property, do not give a sufficient range of price levels on which to predicate the price levels of all items entering into the two properties.

(3) In both charts, use has been made of the same U. S. Department of Labor index figures on building materials, miscellaneous commodities and labor, when the dates of the two appraisals are six months apart and under no circumstances could the figures be correct for both dates. In addition, the Department of Labor index figures on building materials, used by the Company's engineer, are not comparable to the materials entering into the construction of these two plants; the index figures for miscellaneous commodities, for at least a part of the period in which they were used, do not apply at all; and the index figures for labor are based on all union labor in forty-five or fifty cities in the United States, none of which are in Oklahoma, and of which, labor in the building trades is a small part.

The trades considered in making up these index numbers include the Printing and publishing trades, in both book and newspaper work; Bakers; Building trades; Chauffeurs, teamsters and drivers; Freight handlers; Granite and stone workers; Metal workers; Mill-

work; and prior to 1918, all union workers in brewery and bottling establishments.

Authoritative records of building trade wages in Oklahoma City are available from 1913 to 1920 inclusive (see exhibit filed with the Commission January 8) and are without question a better gauge of the labor actually used in the construction of these properties, than the Department of Labor figures used by the Company's engineer. Department of Labor index figures are available for each item of building materials entering into this construction, such as brick, cement, etc., and could have been accurately applied after making a material analysis of buildings. Even if they represented correct measures of price levels, Department of Labor index figures for building materials, miscellaneous commodities and labor, in Chart A, page 6, of the electric appraisal, have been incorrectly applied in that the Company's engineer has in all cases called these the "weighted averages" for the period under which they are given in the above charts, when as a matter of fact they were not weighted and did not apply on the dates used. The gas appraisal date corresponds practically to the dates of the index figures of labor, but this is not true of the appraisal of the electric property, and in no case do the figures used for September 30, 1920, correspond with the actual level figures at that time. This results in wrong percentages being shown in the final columns of both charts.

(4) In separating accounts or items into labor and material no analysis has been made of the total account itself, with the result that the per cents allotted to materials and labor are in many cases incorrect. This is especially noticeable in the Enid gas appraisal where the Company's engineer uses labor as twenty-five per cent of the total on main and distributing lines, whereas an analysis of his figures shows that labor was in excess of thirty-nine per cent of this item.

(5) In figuring the per cent that the five-year average price of pipe is of the 1920 price, the Company's engineer has compared the five-year average price on the basis of Pittsburgh base with actual quotations gotten from Crane Company as of the date of the appraisal. This is not mathematically correct, and as a matter of fact the comparison of Pittsburgh base prices plus freight for a period of five years with the Pittsburgh base prices plus freight on the date of the appraisal, would give a higher per cent than actually used by the Company's engineer. However, a still further discrepancy exists in the Company's engineer's figures because of the wrong application of freight rates to Pittsburgh base prices of pipe, for it appears from his figures and his testimony, that a less-than-carload rate was used and applied to all pipe in the gas properties in Oklahoma covered by this valuation. In addition to this, the same f. o. b. Oklahoma price is used for pipe in both the gas and electric appraisals, in spite of the fact that the car-lot freight rate changed from 74 to 98½ cents per 100 pounds on August 26, 1920, or between the dates of these two appraisals.

392 (6) Depreciation cannot be accurately determined by the inspection method. The Company's engineers recognize that age of a property may have something to do with the proper measure of depreciation, at least this might be inferred from their exhibits before the California Railroad Commission in the San Diego Gas and Electric rate case, where the sinking fund method of depreciation was applied to that property.

(7) The percentages given overheads and going value in the Company's appraisal of both the gas and electric properties are excessive. Certainly the maximum overhead of 15% for all overheads, excepting going value, should be ample in this case. Going value has been defined as the difference between the value of the bare bonus of a plant ready to do business, but with no customers attached, and a similar plant with customers attached. Its computation, therefore, resolves itself into a determination of the cost of attaching the business, best measured by the difference in revenue returned to the starting plant and the operating plant, during the period the business is being acquired.

If, in making this calculation, we assume a fair rate of return over and above operating expense, including depreciation, and assume that the starting plant would attach a sufficient volume of business from easily acquired sources of revenue to pay operating expenses on the average from the start of operation, and further assuming a fixed period, say two years, to be required for developing an organization and attaching the business, the starting plant would average a net return of one-half of the annual rate of return assumed, making this cost over a two-year period equal to the assumed fair rate of return. On the above basis, using the Company's 20% figure of going value, would mean that the annual rate of return on the property should be 20% over and above operating expenses and depreciation. Such a conclusion is of course absurd, and it is altogether likely that any going value computation made on a reasonable rate of return will approximate from 6 to 8 per cent of the physical value of the plant instead of 20%.

393 I testified on January eight-, with respect to the inclusion of overheads and going values, and stated at that time that in my own practice, I have been connected with appraisals where going values, ranging from 0 to 15% of the physical values were used, but that more recent valuations tend to a reduced percentage somewhere under ten per cent, where the item of going value cannot be proved by the records of the Company.

It seems unnecessary to expand further on objection number (1), summarized on page 2, for the Commission is familiar with the proper treatment of the extreme war price level, as affecting the value of a property largely developed before such prices became effective, and which will be in the public service for a good many years after the five years of war prices cease to have an effect on the value of those parts of this property not actually constructed during the war price period.

The public cannot question the right of the Oklahoma Gas &

Electric Company to a reasonable return on their investment, but on the other hand the Company cannot question the right of the public to pay a rate not in excess of a reasonable return, and if the amount of that investment, and the periods in which it was made, cannot be determined, the period over which prices are to be used in determining a proper value for rate making purposes should go back for at least ten years.

Elaborating on our summary to objection No. 2, page 2; Chart A, page 10, of the gas appraisal bases the per cent that the five-year average price is of the March 31, 1920, price on the following items:

- 4" standard screw steel pipe.
- 6" standard screw steel pipe.
- 394 4" gas regulators.
- 6" " "
- 5 light gas meters.
- 10 " " "
- 1½" service pipes.

These, taken in connection with the Department of Labor index prices on building materials, miscellaneous commodities and labor, have been applied on page 13 to twenty-one classifications of items entering into the property. It should be further noted that the following classifications are given on the five-year average, an 80% value of the March 31, 1920 price: Land devoted to gas operations; gas generators; gas holders; furnaces, boilers and accessories; steam engines; benches and retorts; water gas sets, and acc's; purification apparatus; accessory equipment at works; gas regulators; gas tools and implements; gas laboratory equipment; general office equipment; general shop equipment; general utility equipment; If this percentage was derived from Chart A on page 10, it was based on 4" and 6" gas regulators, and on the index figure for miscellaneous commodities, which later figure cannot be correctly applied in this case, because it is not based on similar commodities.

In the case of the electric appraisal, Chart A, page 6, the Company bases the per cent that the five-year average price is of the March 31, 1920 price, on the following items:

- 35 ft. cedar poles.
- 45 " " "
- #6 T. B. W. P. copper wire.
- #1/0 " " "
- #3 S. T. R. bare copper wire.
- #6 bare solid copper wire.
- 5 K. W. pole type transformers.
- 25 K. W. " " "
- 5 amp. 110 volt meters.
- 25 " 110 " "
- 5 " 220 " "
- Boilers.
- Engine type generators.

Switchboard instruments, oil switches, circuit breakers, lever switches and marble.

Engines.

6" black pipe.

U. S. Department of Labor index for building materials.

"	"	"	"	"	"	miscellaneous commodities.
"	"	"	"	"	"	labor.

395 The percentages obtained from the above items are applied, on page 9, to twenty-six separate accounts, many of which accounts contain major items which are given no weight whatsoever because no coverage price has been figured for them. For example: The furnaces, boilers and accessory account shows in Column 3 on page 9, that the five-year average price of materials was 90% of the 1920 price; if this 90% figure was obtained from Chart A, page 6, it was based on boilers. This account is detailed on pages 259 to 270 inclusive and totals \$86,744. Boilers, including stacks and breeching, feed water heaters, pumps, concrete foundations, settings, etc., make up \$66,702 or 78% of the total account. The remaining 22% is made up of pipe and its installation, which according to Chart A, page 6, had a five-year average price of only 81% of the 1920 price, and the weighted five-year average price for this account would be 88% of the 1920 price instead of 90% as used.

Objection No. 3, page 3, to the use of U. S. Department of Labor index numbers for building materials, miscellaneous commodities and labor, is based first on the fact that the figures used are not applicable to the construction work in Oklahoma; second, that as derived by the Company's engineer they are mathematically incorrect; and third, they do not apply in the periods in which they were used.

U. S. Department of Labor Bulletin #200, pages 283 and 284, shows that the "Lumber and Building Materials" group, used by the Company's engineer as "Building Material" was based on the following items for the seven-year period preceding 1916. The Department method of arriving at these index numbers is based on total sales of materials, and is therefore not an accurate gauge of relative prices in a given community.

396	U. S. Department of Labor.		Black & Veatch.
	Items.	% of group total.	% of total by classification.
Common Brick:			
	Chicago, salmon .....	.92	3.28
	Cincinnati, red, bldg. ....	1.20	
	New York, red, bldg. ....	1.16	
	Domestic Portland Cement .....	5.59	5.59
Glass, plate, polished, glazing:			
	3 to 5 square feet .....	.27	1.74
	5 " 10 " " .....	.37	
	Window, A A .....	.61	
	B .....	.49	
	Lath, eastern spruce .....	.99	.99
	Lime, Rockport, common .....	1.60	1.60
Lumber:			
	Douglas for #1 .....	1.69	78.75
	#2 and better .....	1.02	
	Hemlock .....	3.88	
	Maple .....	2.51	
	Oak, plain .....	4.99	
	quartered .....	14.98	
	Pine, White, boards #2 .....	7.74	
	" " uppers .....	2.37	
	yellow, flooring .....	23.69	
	" siding .....	10.12	
	Poplar, yellow .....	2.98	
	Spruce, eastern .....	2.78	
Paint materials:			
	Lead carbonate .....	1.02	5.77
	Linseed oil raw .....	3.39	
	Turpentine .....	.80	
	Zinc .....	.56	
	Putty .....	.04	.04
	Rosin .....	.81	.81
Shingles, 16" long:			
	Cypress .....	.25	1.43
	Red cedar .....	1.18	
	Total .....	100	100

From this tabulation it will be noted that building brick and cement are of less moment in the list of materials considered, than paint materials; and that lumber has a weight of 78.75 per cent of the total group. Obviously price levels based on these figures cannot correctly apply to power plant construction. From U. S. Department of Labor Bulletin #200, and from the War Industries Board War Price Bulletins, the price levels of building materials, by individual items, may be obtained. Their application may then be correctly made to any building after analysis into its component parts.

397 The following analysis shows the application by the Company's engineer, and a comparative application of the correct Department of Labor figures on building materials for the gas and electric appraisals, with foot notes indicating discrepancies in the Company's figures.

### *Index Numbers, Building Materials.*

#### *Gas Appraisal.*

Period.	Uhlendorf chart A, page 10.	Monthly Labor Review, vol. X, #2, Feb., 1920, vol. XI, #5, Nov., 1920.
April 1, 1915 to March 31, 1916.....	95	95
April 1, 1916 to March 31, 1917.....	102	120
April 1, 1917 to March 31, 1918.....	133	131
April 1, 1918 to March 31, 1919.....	157	157
April 1, 1919 to March 31, 1920.....	228	228
5-year average .....	164 (a)	146
Rep. cost new price March 31, 1920 ....	324	324
%, 5-year avg. of March 31, 1920, price..	51 (b)	45

#### *Electric Appraisal.*

	Chart A, page 6.	
Oct. 1, 1915 to Sept. 30, 1916.....	95	99
Oct. 1, 1916 to Sept. 30, 1917.....	102	116
Oct. 1, 1917 to Sept. 30, 1918.....	133	145
Oct. 1, 1918 to Sept. 30, 1919.....	157	175
Oct. 1, 1919 to Sept. 30, 1920.....	228	301
5-year average .....	164 (c)	167
Rep. cost new price Sept. 30, 1920.....	324 (d)	318
%, 5-year avg. of Sept. 30, 1920, price..	51 (e)	53

(a) Incorrectly calculated on basis of figures given, should be 143.

(b) " " " " " " " " " 44.

(c) " " " " " " " " " 143.

(d) Not the correct figure. Applies to March and not to September.

(e) Incorrectly calculated on basis of figures given, should be 44.

In the case of the U. S. Department of Labor index numbers of miscellaneous commodities, price levels of which were used by the Company on certain items in the Enid valuation, the U. S. Department of Labor Bulletin #200, page 285, shows the following items entering into this classification for the seven years preceding 1916.

398

U. S. Department of Labor.		Black & Veatch.
Items.	% of group total.	% of total by classification.
Cottonseed meal, prime.....	5.34	5.34
Cottonseed oil, prime.....	8.07	8.07
Jute, raw.....	1.67	1.67
Lubricating oil, paraffin.....	7.44	7.44
Malt, standard keg beer.....	4.14	4.14
Paper:		
News .....	5.31}	12.75
Wrapping .....	7.44}	
Rope, pure manila.....	1.98	1.98
Rubber, Para Island, fine.....	4.70	4.70
Soap:		
Laundry, 72-bar, 60# box.....	3.64}	9.27
100 " 75# " .....	3.74}	
Toilet, castile, mottled, pure perfumed, 4 oz. cakes.....	1.89}	
Starch, Laundry.....	2.77	2.77
Tobacco:		
Plug, Climax 12 pc. to lb., 14- $\frac{3}{4}$ oz. to plug .....	8.48}	21.40
Smoking, Blackwell's Bull Durham, Seal of North Carolina.....	12.92}	
Whiskey:		
Straight, Bourbon, in bbls. Ky.....	8.57}	15.31
" in Bottles " .....	1.41}	
Rye in bbls., Illinois.....	1.96}	
" " Penn. ....	2.59}	
" " bottles Ill.....	.40}	
" " " Penn.....	.38}	
Wood pulp, sulphite, comestic.....	5.15	5.15
Total .....	99.99	99.99

From this tabulation it will be noted that price levels of miscellaneous items of the properties in question, cannot properly be based on the commodities considered in the miscellaneous classifications by the Department of Labor; only three of the items listed, Jute, Lubricating Oil, and Rope, could possibly enter into the valuation and they make up only 11.09% of the total, affecting it less than paper, tobacco or whiskey.

Even if these figures had been applicable, they were incorrectly applied, as shown by the following comparison of the figures used by the Company's engineer and the correct figures by the Department of Labor.

399 *Index Numbers, Miscellaneous Commodities.*

Gas Appraisal.

Period.	Uhlendorf chart A, page 10.	Monthly Labor Review, vol. X, 22, Feb., 1920, vol. XI, 25, Nov., 1920.
April 1, 1915 to March 31, 1916.....	101	101
April 1, 1916 to March 31, 1917.....	125	128
April 1, 1917 to March 31, 1918.....	168	163
April 1, 1918 to March 31, 1919.....	200	200
April 1, 1919 to March 31, 1920.....	221	221
5-year average .....	183 (a)	174
Rep. cost new price March 31, 1920....	230	230
% , 5-year avg. is of March 31, " price	80 (b)	71

Electric Appraisal.

	Chart A, page 6	
Oct. 1, 1915 to Nov. 30, 1916.....	101	111
Oct. 1, 1916 to Nov. 30, 1917.....	125	145
Oct. 1, 1917 to Nov. 30, 1918.....	168	183
Oct. 1, 1918 to Nov. 30, 1919.....	200	212
Oct. 1, 1919 to Nov. 30, 1920.....	221	233
5-year average .....	183 (c)	177
Rep. cost new price Sept. 30, 1920....	230 (d)	239
% , 5-year avg. is of Sept. 30, 1920 price.	80 (e)	74

(a) Incorrectly calculated on basis of figures used, should be 163.

(b) If correctly calculated would be 71.

(c) Incorrectly calculated on basis of figures used, should be 163.

(d) Note the correct figure; applies to March and not September.

(e) If correctly calculated would be 71.

The U. S. Department of Labor index numbers for labor, used by the Company's engineer are based on union wage scales outside the building trades as well as in the building trades themselves. They do not include wage scales in Oklahoma. Department of Labor wage scales applying only to the building trades, were available for the periods covered, and Oklahoma City wage scales were available from compilations by E. M. Craig, Secretary of the Builders Association, Chicago (copy of 1913 to 1920 schedules were filed with the Commission on January 8).

In applying the Department of Labor wage levels the Company's engineer did not use weighted levels, and in the electric appraisal the correct figures were not applied to the September 30, 1920, date.

In the gas appraisal the five-year average covers the period from April 1, 1915, to March 31, 1920. The Department of Labor index figures of wage levels apply from May 1 of each year; therefore the weighted average wage level, using these figures would be calculated as follows:

400

Apr. 1, 1915 to Mch. 31, 1916; 1 mo.	@ 102; 11 mos.	@ 103 =	Weighted avg. of.	103
Apr. 1, 1916 to Mch. 31, 1917; 1 "	@ 103; 11 "	@ 107 =	"	107
Apr. 1, 1917 to Mch. 31, 1918; 1 "	@ 107; 11 "	@ 114 =	"	113
Apr. 1, 1918 to Mch. 31, 1919; 1 "	@ 114; 11 "	@ 133 =	"	131
Apr. 1, 1919 to Mch. 31, 1920; 1 "	@ 133; 11 "	@ 155 =	"	153
Total.....				607

Average for 5-year period..... 121  
 % , 5-yr. average is of Mch. 31, 1920 = 121 divided by 155 = 78

Using building trades wage levels compiled by E. M. Craig (exhibit on file with Commission) we have for the same periods—

Apr. 1, 1915 to Mch. 31, 1916; 12 mos.	@ 106 — weighted average of	106
Apr. 1, 1916 to Mch. 31, 1917; 12 "	@ 106 —	106
Apr. 1, 1917 to Mch. 31, 1918; 1 mo.	@ 106; 11 mos.	118
Apr. 1, 1918 to Mch. 31, 1919; 1 "	@ 119 = weighted avg. of	138
Apr. 1, 1919 to Mch. 31, 1920; 1 "	@ 119; 11 "	168
Apr. 1, 1919 to Mch. 31, 1920; 1 "	@ 140 =	168
Apr. 1, 1919 to Mch. 31, 1920; 1 "	@ 140; 11 "	168
Total.....		636

Weighted average for 5-year period = 636 divided by 5 = 128  
 % , 5-yr. average is of Mch. 31, 1920, price = 127 divided by 170 = 75

The Company's engineer used 79% as representing the per cent the 5-year average price was of the March 31, 1920 price.

In the case of the electric property appraisal, the Department of Labor index figures, if correctly applied would give the following results:

Oct. 1, 1915 to Sept. 30, 1916; 7 mos. @ 103; 5 mos. @ 107 = weighted avg. of	105
Oct. 1, 1916 to Sept. 30, 1917; 7 " @ 107; 5 " @ 114 =	110
Oct. 1, 1917 to Sept. 30, 1918; 7 " @ 114; 5 " @ 133 =	122
Oct. 1, 1918 to Sept. 30, 1919; 7 " @ 133; 5 " @ 155 =	142
Oct. 1, 1919 to Sept. 30, 1920; 7 " @ 155; 5 " @ 185 =	168
Total.....	647
5-year average—647 divided by 5 =	129
%, 5-year average is of Sept. 30, 1921, price = 129 divided by 185 =	70

(Pages 75 to 92 Vol. XI, #4, Oct. 1920 Monthly Labor Review.)

Applying E. M. Craig's levels of wages in the building trades for the same periods, the following results are obtained:

Oct. 1, 1915; to Sept. 30, 1916; 12 mos. @ 106 = weighted average of	106
Oct. 1, 1916; to Sept. 30, 1917; 7 mos. @ 106; 5 mos. @ 119 = weighted av. of	111
Oct. 1, 1917; to Sept. 30, 1918; 7 mos. @ 119; 5 mos. @ 140 =	128
Oct. 1, 1918; to Sept. 30, 1919; 7 " @ 140; 5 " @ 170 =	153
Oct. 1, 1919; to Sept. 30, 1920; 7 " @ 170; 5 " @ 202 =	183
Total.....	681
5-year average = 681 divided by 5 =	136
%, 5-yr. avg. is of Sept. 30, 1920, price = 136 divided by 202 =	67.4

The figure of 79 was used by the Company's engineer as representing the per cent the 5-year average price was of the September 30, 1920, price. The proper application of the Department of Labor index figures as used by him would have given 70 instead of 401 79 and, the use of proper wage levels applying to Oklahoma would have given the above result of 67.4.

Comparisons based on the 10-year average of Oklahoma City wage scales in the building trades, shows that for the 10-year period ending March 31, 1920, the 10-year average was 66.4% on the March 31, 1920, price. For the ten-year period ending September 30, 1920, the ten-year average was 58.4% of the September 30, 1920, price.

The following comparison of per cents that the five and ten-year average labor price is of the 1920 price, should make clear the fact that the same figures cannot be applied to the two appraisals, as well as the fact that the Company's figures have been wrongly derived:

Derived by—	Gas appraisal, 5 yrs. ending March 31, 1920.	Electric appraisal, 5 yrs. ending Sept. 30, 1920.
Uhlendorf .....	79	79
Weighted averages from Dept. of Labor....	78	70
Weighted averages on building trades labor only, based on E. M. Craig's tabulations..	75	67.4
Weighted averages on building trades labor only, based on E. M. Craig's tabulations, but on ten year period.....	66.4	58.4

Expanding further on the summary of objection No. 5, page 4, attention is directed to Chart B, page 13, of the gas appraisal and Chart B, page 9, of the electric appraisal, showing the percentage division made of labor and materials in various accounts. Lack of time has prevented the detailed analysis of the classifications entering into these properties as outlined by the above charts, and their separation into per cents of labor and material. However, from my own experience as an engineer, power plant buildings similar to the construction used at Enid, analyzed during the period of 1920, should have carried approximately 35% labor and 65% materials. An analysis of the Company's classification "Main and Distributing Lines" of the gas appraisal, showing 75% material and 25% labor, is not borne out by an examination of figures submitted in evidence by the Company's engineer.

402 The chart shown on page A-6 of this report, derives in Column 7a, on the basis of the separation of labor and material prices testified to by Mr. Uhlendorf, the per cent that labor was of the total cost of pipe lines March 31, 1920; this per cent ranges from 30 to 65 on the basis of Mr. Uhlendorf's figures on pages 44 and 45 of the gas appraisal. By weighing these figures as shown by the tabulation below, Mr. Uhlendorf's figures show that in the

case of the Enid appraisal, the labor on this particular item was 36% of the total instead of 25% as used. Making the proper corrections for the price of pipe, this per cent would be 38% and considered on the basis of the total account, which includes \$10,039 for trenching for pipe under pavement, an item which was wholly labor, we have an additional 3.4% to add to Mr. Uhlendorf's figure of 36%, making labor on the items considered 39.4% of the total instead of 25% as shown, and 41.4 on the corrected price for pipe.

Size of pipe. (1)	(a) Total, dollars. (2)	% of total. (3)	(b) % labor of, total. (4)	Col.		Col. (3) x (6). (7)
				(3) x (4).	(5)	
¾" S. C.	390	.1	..	..	..	..
1" "	324	.3	65	19.5	68	20.4
1¼" "	600	.2	58	11.6	62	12.4
1½" "	4,545	1.6	56	89.6	59	94.4
2" "	24,370	8.5	53	450.5	56	476.0
2½" "	4,010	1.4	43	60.2	46	64.4
3" "	9,209	3.2	40	128.0	43	137.6
4" "	106,898	37.2	33	1,227.6	35	1,302.0
4" Plain end	46,284	16.2	38	615.6	40	648.0
6" "	55,118	19.2	33	633.6	34	652.8
8" "	34,581	12.1	30	363.0	32	387.2
Totals	286,929	100	..	3,599.2	..	3,795.2

Weighted per cent = 3,599.2 divided by 100 = 35.99 + 3.4 = 39.39.

Weighted per cent on corrected figures = 3,795.2 divided by 100 = 37.95. 37.95 + 3.4 = 41.35.

(a) Pages 44-45 Enid gas appraisal.  
(b) Per cent Labor of Total, Column 6, pages A-6.  
(c) Column 10, page A-6.

Chart B, page 13, of the gas valuation shows the following calculations for deriving the percentage to apply to "Reproduction Cost New" March 31, 1920, in order to secure the average five-year value on main and distributing lines.

403	% of total cost in place.		% that 5-yr. avg. is of 1920 price.				% of that 5-yr. avg. is of 1920 price.
	Mtls.	Labor.	Mtls.	Labor.	(1) x (3).	(2) x (4).	(5) + (6).
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	75	25	81	79	6,075	1,975	8,050
On a correct basis, the above figures would be, for the five-year average.							
	61	39	84.9	75	5,179	2,925	8,104
On a ten-year average basis, the figures would be							
	61	39	66.7	66.4	4,069	2,590	6,659
							66.6

The application of the correct per cent of 81 to the 1920 price, increases the Company's five-year average price on main and distributing lines, fittings omitted, by about \$1,400. However, the March 31, 1920, value of this item, corrected for the pipe price and freight rate prevailing on that date, decreases the Company's figure approximately \$15,400, while the use of the ten-year per cent of 66.6 will decrease the Company's five-year average on this particular item approximately \$41,000.

With respect to objection No. 5, on page A-5 and A-5a are developed the price per foot of pipe f. o. b. Enid on March 31, 1920, for the five-year and ten-year periods preceding that date. From the prices developed the ten-year and five-year averages prior to March 31, 1920, are 67 and 85.1% respectively of the March 31, 1920, price.

Size of pipe.	(1)	% of total, dollars.	(2)	% 10 yr. avg. of March 31, 1920, price.	(3)	(2) x (3).	(4)	% 5 yr. avg. of March 31, 1920, price.	(5)	(2) x (5).	(6)
¾" S. S. Sc.	.....		.1	67	6.7	85	8.5				
1" "	.....		.3	67	20.1	85	25.5				
1¼" "	.....		.2	67	13.4	85	17.0				
1½" "	.....		1.6	67	106.2	85	136.0				
2" "	.....		8.5	71	603.5	85	722.5				
2½" "	.....		1.4	71	99.4	91	127.4				
3" "	.....		3.2	71	227.2	91	291.2				
4" "	.....		37.2	66	2,455.2	85	3,162.0				
4" Plain End	.....		16.2	66	1,069.2	84	1,360.8				
6" "	.....		19.2	66	1,267.2	85	1,632.0				
8" "	.....		12.1	69	834.9	85	1,028.5				
			100	..	6,704.0	..	8,511.4				

Average = 67.0 10 year.  
Average = 85.1 5 year.

404 In the gas property valuation the following artificial gas equipment, not now in use, has been included. To the amounts given here should be added all overheads and going value before deducting from the total valuation.

Page.	Item.	Amount.
30	Miscellaneous at gas plant.....	\$5,400
35	Gas generators .....	29,720
37	Gas holders .....	30,150
37	Furnaces, Boilers and Accessories.....	2,400
38	Steam engines .....	820
39	Benches and Retorts.....	5,700
40	Water Gas Sets & Accessories.....	7,200
41	Purification Apparatus .....	11,540
42	Accessory equipment at works.....	17,238
	Sub-Total .....	110,168
	Amount 19.75% .....	21,758
	Sub-Total .....	131,924
	Going Value, 20%.....	26,385
	Total deductions from gas valuation for unused equipment.....	\$158,309

Obviously the theory of valuation developed by the Company's engineer, has not been accurately developed mathematically, and the results of my investigation of the few items I have examined, lead me to think that there are perhaps other errors of sizable proportion in the various other parts of the valuation. Many of these will, no doubt, be rectified by the Commission's Engineers and Accountants during the investigation of these valuations.

I am attaching hereto 21 pages of tabulation supporting some of the statements made herein, and showing the methods used in the derivation of certain unit cost data. Should additional data be required, I shall be glad to supply it.

Respectfully submitted,

(Sd.)

E. B. BLACK.

405 And further Affiant sayeth not.

E. F. McKAY.

Subscribed and sworn to before me this the 24 day of February, 1922.

[SEAL.]

J. S. GRAM,  
Notary Public.

My Commission expires 1-11-1923.

Endorsed: Filed in District Court on February 25, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

406 In the District Court of the United States for the Western District of Oklahoma.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art. L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

COUNTY OF OKLAHOMA,  
*State of Oklahoma, ss.*

*Affidavit.*

E. F. McKay, being first duly sworn on oath, deposes and says: I am a resident of Oklahoma City, Oklahoma, and I am an attorney at law by profession. I have been engaged for the past ten years in considering and analyzing reports of public utilities affecting their operation and disclosing their holdings. During more than eight years I have been a member of the staff of the Corporation Commission of Oklahoma, and during a major portion of that time have been engaged in inspecting, analyzing and considering evidence offered in cases on hearing before the said Commission, including property and accounting reports and statements and exhibits touching the subjects of public utility operation and valuation. I have been charged with the responsibility of developing findings of fact from such evidence and with the preparation of orders of the said Commission based upon the testimony offered and exhibits introduced. In connection with this work I have been required at all times to inspect, check, analyze and consider reports purporting to reflect the results of operation of public utilities and statements purporting to show the physical holdings of such utilities, together with additions and betterments thereto as made and reported from time to time.

By reason of the duties above outlined I have had occasion to become familiar, and am familiar, with reports of the character referred to, and am required to, and do, know the results of the operation of such utilities as revealed or alleged in and by such reports.

During all of the period of my employment as above outlined I have been required to consider, analyze, ascertain and know the results of operation of the properties owned and operated by the complainants in this proceeding.

407 I have read the various and divers affidavits introduced in this proceeding by Edward N. Strait and have analyzed the statements therein found, and in connection therewith wish to make the following observations:

The results of operation of the properties of the Oklahoma City,

Muskogee, Enid and El Reno divisions of the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company, as purported to be revealed in affidavits of Mr. Strait, are based upon three twelve-month periods, to wit: with the twelve months ended September 30, 1921, the period of similar duration ended October 31, 1921, and the year ended November 30, 1921. I have investigated the results of operation for the three periods named, respectively, and find that there is no substantial difference as between the results of the periods mentioned, one compared with another, and that the results of operation for the twelve months ended October 31, 1921, are representative. As all deductions and computations developed or made in connection with and as a basis for the order of the Corporation Commission giving rise to this proceeding, to wit: Order No. 1996, Order 1999 and Order 2010, were based upon the results of operation for the year ending October 31, 1921, the observations herein with reference to the conclusions advanced in the affidavits of Mr. Strait will relate only to such conclusions set forth as representing the results of operation for the year ending October 31, 1921.

Observations herein will be made as to the various gas distributing centers involved in the order in which they are considered in the orders of the Corporation Commission referred to, viz.: first, Oklahoma City, Yukon and Britton; second, Enid and El Reno; third, Muskogee.

#### Oklahoma City.

Mr. Strait's affidavit alleges that the total amount of gas sold in the Oklahoma City division during the year ended October 31, 1921, was 3,151,543,000 cu. ft., which he divides between two rate classifications as follows:

Classification.	Amount of gas sold.
First 500,000 cu. ft. per month.....	2,378,941,00 cu. ft.
Excess " " " " .....	772,602,000 " "
Total .....	3,151,543,000 " "

For the more complete information of the court it should be stated that gas up to 500,000 cu. ft. per month pays the domestic rate to the distributing company, and a specified rate to the pipe line company supplying the gas at the city border, while gas in excess of 500,000 cu. ft. per month, sold to any one consumer, pays a lower rate both at the burner and at the city gate, usually termed an industrial rate. The reports of the complainant company to the Corporation Commission show the figure above set forth as representing total sales for the year ending October 31, 1921, to be the amount sold, as developed from report to the Corporation Commission.

The apportionment of the total as between the two rate classifications referred to does not check exactly but the discrepancy is not material to the issue herein.

Mr. Strait uses as a rate base for this calculations as to Oklahoma City a valuation of \$2,660,883.00, which he states is taken from the affidavit of E. D. Uhlendorf, and which is held to represent the fair valuation at the present time of the Oklahoma Gas & Electric Company used and useful in the distribution of natural gas in the Oklahoma City division. The rate basing value of the property as used by the Commission is \$1,280,660.00. This is developed by 408 taking the sworn completion reports of the complainant company furnished in the regular course of business, adding to the physical plant so reported 20 per cent for overhead and intangible factors which the Commission has held in many cases to be a reasonable addition for these factors, deducting from the figures so developed the items of plant not now used and useful, deducting depreciation heretofore earned and paid, representing an amount not now in the property, and further deducting the amount representing property paid for by consumers, without reimbursement, and therefore not representing investment by the complainant company.

Mr. Strait's affidavit, in its reference to operating expenses, alleges that the amount of gas lost and unaccounted for in distribution is approximately 20 per cent; that the amount of gas required at the city gate to furnish the customers the amount of gas sold during the year ended October 31, 1921, is therefore 3,939,430,000 cu. ft.; that under the gate rate order all of this, except that portion which is delivered to customers using in excess of 500,000 cu. ft. per month is paid for by the Oklahoma Gas & Electric Company at the rate of 25 cents per M cu. ft.; that the amount delivered to customers in excess of 500,000 cu. ft. per month is paid for at the rate of 20 cents per M cu. ft.; and that on the above basis the cost of gas to the Oklahoma Gas & Electric Company for a like volume under the present gate rate would be \$946,227.00.

The affidavit of Mr. Strait sets forth further figures purporting to show operating expenses, exclusive of depreciation, amortization and return, total operating expenses, and amount available for depreciation, amortization and return, and purports to show that the last mentioned amount would be, under present rates, \$85,155.00.

Mr. Strait's affidavit thereafter presents a figure purporting to show the amount available for depreciation, amortization and return, using a gate rate of 35 cents instead of 25 cents per M cu. ft. for all gas used by the company except that portion which equals the amount sold to customers in excess of 500,000 cu. ft. per month, such figure being \$77,735.00. Processes of computation used in arriving at the two figures were identical.

The testimony in the case in which Order No. 1995 was issued shows, as is alleged in Mr. Strait's affidavit and already referred to, that the amount of gas lost and unaccounted for in distribution in the Oklahoma City division for the year ending October 31, 1921, was approximately 20 per cent. The testimony further shows, however, that such loss of gas in distribution is grossly in excess of that which has been held by any Commission within the knowledge of this affiant to be reasonable; that the Public Utilities Commission of the State of Kansas, after the most exhaustive study and con-

sideration of the subject of leakage in natural gas distributing system within the knowledge of this affiant, held that a reasonable leakage would be 200,000 cu. ft. per per per mile of 3 inch main or its equivalent; that the gas engineer regularly employed by the Corporation Commission of Oklahoma holds that it is practicable and profitable to reduce leakage in natural gas distributing systems to a basis of 500,000 cu. ft. per year per mile of a 3 inch main or its equivalent; that the leakage shown in testimony before the Corporation Commission in the case giving rise to this proceeding, and admitted in Mr. Strait's affidavit in this proceeding, amounts to 2,000,000 cu. ft. per year per mile of 3 inch main or its equivalent, which is ten times the leakage found by the Kansas Commission after its exhaustive investigation to be the reasonable standard, and four times the amount held by the engineer of the Oklahoma Commission to represent a maximum down to which leakage in distributing systems may practicably and profitably be reduced.

409 The Oklahoma Commission holds that in view of its investigation of the subject of leakage in distributing systems, any leakage in the Oklahoma City system in excess of 10 per cent, or 1,000,000 cu. ft. per mile of 3 inch main, or its equivalent, which is five times the Kansas standard and twice the amount to which its engineer holds the leakage may profitably be reduced, should not exist, should not be permitted and will be held to be excessive. The complainant company's only witness on the subject of leakage stated that in the city of Muskogee repairs have been made during the past year, as a result of which leakage in that system has been steadily reduced until it was at the time of the hearing not in excess of 14 per cent and was being further reduced each month.

That the repair work done at Muskogee during the year did, in fact, go far toward correcting a situation extremely wasteful and burdensome, is further proven by a report on the Muskogee leakage situation, dated February 28, 1921, signed by H. C. Hancock, engineer. He stated that his investigation, made for the Corporation Commission, was collaborated in by the Muskogee Gas & Electric Company, the Oklahoma Natural Gas Company, the Corporation Commission and the City of Muskogee, and that the loss per year per mile of 3 inch main or its equivalent, in Muskogee at that time, was 3,034,000 cu. ft. This is almost twice the loss and waste prevailing in Oklahoma City according to Mr. Strait's affidavit and the evidence before the Corporation Commission.

Reports of the Oklahoma Gas & Electric Company to the Corporation Commission show that the average annual gross revenue for the seven years ended June 30, 1915 to 1921, inclusive, was \$1,169,335.32. The average net revenue as reported by the company was \$215,479.87.

The company claims as an operating expense two and one-half per cent on gross earnings paid each year to an engineering and management corporation. This item the Commission, in arriving at the rate fixed, disallowed, for the reason that the evidence failed to show any services of value to the local company rendered by such management company.

The average two and one-half per cent payments per annum for the seven years was \$29,233.33. Adding this to the net income reported by the company gives \$244,713.20 per annum. The average investment during the seven years enumerated was \$1,375,330.61. The annual average return for dividends, interest, depreciation and other purposes was 17.8 per cent. During the whole of that period the Commission recognized 8 per cent per annum as a reasonable return for dividends, interest, etc., and 5 per cent per annum as a fair basis upon which to accrue a fund for depreciation, obsolescence, etc., making a total recognized to be fair and equitable of 13 per cent per annum. This would yield a return during the seven years stated of \$1,261,650.46. Deducting that amount from the actual returns as reported by the company leaves a surplus of \$256,808.64.

Adding to the surplus above referred to the two and one-half per cent of gross revenues disallowed as an operating expense, would bring the surplus to \$461,477.31.

From the foregoing figures it is clear that this company had, during the past seven years at least, ample funds available to have maintained its property in a reasonably good condition, which, had this been done, would have avoided the gross waste of gas which has resulted in fact from the neglect, failure and refusal of this company to apply its surplus revenues to the prevention of such waste and loss, instead of permitting such surplus to be used otherwise and this gross loss and waste of gas to continue.

410 The unfavorable result of operation of the complainant company forecasted in the affidavit of Mr. Strait depends wholly upon the assumption that the gross loss and waste of gas shown to have occurred during the past year is to be permitted to continue without correction and is to be condoned and approved by this court. Said result is converted into a highly favorable result if the cost of gas as a factor in future operation be based upon a leakage of 10 per cent, or 1,000,000 cu. ft. per year per mile of 3 inch main or its equivalent, instead of 20 per cent two 2,000,000 cu. ft. per year per mile of 3 inch main, which still would permit a loss and waste five times as great as the Kansas Commission after exhaustive investigation has held reasonable, and twice as great as the Oklahoma Commission's engineer would approve. Employing 10 per cent instead of 20 per cent as leakage factor in future operation it is found that gas to be purchased for domestic sale for 1922 will be 2,586,937,000 cu. ft., and will cost, at 35 cents per M, the sum of \$646,734.00. The part of this gas that is sold, which will be 2,328,244,000 cu. ft. (the remainder of gas purchased being lost through leakage) will bring at 45 cents per M, \$1,047,709.80.

Manufacturing gas, according to the same processes of computation, will cost, at 20 cents per M, \$145,853.00 and will bring at 25 cents, \$164,084.00. Special gas, so-called, which sells at the domestic rate, being industrial gas used up to a certain quantity, will cost \$86,260.00 and will bring \$139,742.00. Thus the cost of all gas for 1922, assuming 10 per cent leakage, will be \$848,847.00, and the gross revenue will be \$1,351,536.

Operating expenses are reported to the Commission under three groups of accounts, designated "plant expenses," "distribution and maintenance expenses," and "general expenses," respectively. Plant expenses, as applied to the property involved in this case, consist of the cost of gas only. The other designations are self-explanatory.

Operating expenses aside from the cost of gas will be, assuming (which should not be true), that operating costs will be as high as in the twelve months ending October 31, 1921, \$170,595.06. From this amount, however, is to be deducted \$33,375.73, being two and one-half per cent of gross earnings during the twelve months period, paid to the engineering and management company and not allowed as an operating expense by the Commission, which leaves \$157,330.00 as the operating expense aside from cost of gas and makes the total operating expense, including cost of gas, but not including taxes, the proper amount of which is uncertain, \$1,016,067. Total revenues as already developed will be \$1,351,536, which leaves \$335,469.00 as the net operating revenue, which amount will be 26.2 per cent on the rate basing valuation of \$1,206,625. This amount will pay in full the taxes as charged at 5.3 per cent of the valuation, whether or not it is in full a legitimate charge, and leave 20.9 per cent or more than a reasonable amount, for interest and depreciation.

By identical processes of computation it will be found that if, as some of the gas company representatives have professed to fear, industrial business amounts to little or nothing in 1922, net operating revenue for the year for domestic business alone will be found to be \$263,755.00, and the return for interest and depreciation after paying in full taxes as charged this year, 15.2 per cent.

#### Other Towns.

According to the testimony before the Corporation Commission the leakage or loss of gas in the distributing systems at El Reno, Enid and Muskogee for the year ending October 31, 1921, was 26.1 per cent at El Reno, 21 per cent at Enid and 16.2 per cent at Muskogee. Testimony showed that at Enid and El Reno leakage was increasing from month to month, while at Muskogee where efforts had been made during the year to reduce the same by repairs the loss was decreasing month by month, and was for the year ending

November 30, 1921, only 14.2 per cent. All observations  
411 made as to the leakage waste in Oklahoma City and the excessive loss due to neglect, failure and refusal to make necessary expenditures to prevent such waste apply likewise to the situation in El Reno and Enid. The facts as to Muskogee furnish conclusive proof of the correctness of the statement that such gross waste and loss as has been and is being permitted in Oklahoma City, El Reno and Enid, and which complainants ask this court to approve and permit for the future is unnecessary.

I have examined the reports filed by the complainant companies in the regular course of business from time to time purporting to show the actual cost of the various properties involved herein and

have found that the value of the properties at the time of the hearing proper to be considered as a basis for rates, including all items of property used and useful paid for by the complainant companies for which they have not been reimbursed, deducting in the case of Oklahoma City depreciation heretofore earned and paid, is for the respective proportion involved herein as follows:

Oklahoma City division.....	\$1,280,660.00
Muskogee            ".....	936,491.82
Enid                 ".....	426,944.55
El Reno             ".....	230,680.08

Computing results of operations in the case of Muskogee, Enid and El Reno on the basis of cost of gas, assuming leakage at 10 per cent, it is found that the operation of all the properties will be profitable at the rates prescribed by the Corporation Commission *the* the orders involved herein. Said rates will in each instance yield 8 per cent interest and 5 per cent depreciation, and certainly in the case of Enid and probably in the other towns (due to present downward trend in operating costs) yield a surplus which should be used in improving the condition of the property and bringing the excessive loss and waste due to past neglect of the property down to a point below that which the Commission has prescribed as the maximum that will be permitted.

All the foregoing figures, statements and deductions referred to as having been made and included in the order of the Corporation Commission giving rise to this proceeding have been checked, considered and analyzed by me, and are hereby verified as in my opinion and judgment, true and correct.

E. F. McKAY.

Subscribed and sworn to before me this 24th day of February, 1922.

[SEAL.]

J. S. GRAM,  
Notary Public.

My commission expires Jan. 1, 1923.

Endorsed: Filed in District Court on February 25, 1922. Arnold C. Dolde, Clerk. By M. V. Haws, Deputy.

412 In the United States District Court for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, Defendants.

*Affidavit.*

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

J. W. Duval being first duly sworn, says that he is the Gas Engineer of the Corporation Commission of the State of Oklahoma and that as such he is familiar with the findings and records of said Commission covering the operations of the complainant, Oklahoma Gas & Electric Company, a public utility; that he has read Order No. 1995, made and entered by the Corporation Commission on the 18th day of January, 1922 and has considered the provisions of said order made on that date with respect to the amount of leakage found to exist and used as a basis for the fixing of the rate allowed therein; that the amount of unaccounted for gas shown and found to exist by the Corporation Commission in the system of the Oklahoma Gas & Electric Company, to-wit, approximately 2,000,000 cu. ft. per mile of 3" equivalent main, is excessive and beyond that which would be considered reasonable; that said amount of leakage is approximately

413 ten times the amount fixed and allowed after an exhaustive hearing before the Kansas Industrial Commission and is four times the amount which should exist under reasonable operating conditions.

Affiant further says that leakage in excess of 500,000 cu. ft. per mile of 3" equivalent main, is in excess of what he regarded as reasonable or allowable under anything like ordinary operating conditions.

J. W. DUVALL.

Subscribed and sworn to before me this 25th day of February, 1922.

[SEAL.]

J. S. GRAM,  
*Notary Public.*

My Commission expires 1-1-1923.

Endorsed: Filed in District Court on February 25, 1922. Arnold C Dolde, Clerk, by M. V. Haws, Deputy.

414 In the United States District Court for the Western District of Oklahoma.

No. 502.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

vs.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.,  
Defendants.

STATE OF OKLAHOMA,  
*Oklahoma County, ss:*

Guy B. Treat, of lawful age, on his oath says:

Affiant as Chief Engineer of the Oklahoma Railway Company has charge of all its track and maintenance of its electric apparatus; has been occupying said position for many years and has never heard any complaint from the Oklahoma Gas & Electric Company that the electric bonding of the rails of the Oklahoma Railway Company was inadequate or insufficient.

Affiant further says that in his judgment the tracks and rails of the Oklahoma Railway Company are not improperly bonded. The entire Street Railway System of Oklahoma City aggregates about sixty-one (61) miles, of which thirty-nine (39) miles are in unpaved streets or on private right of way, and the balance amounting to about twenty-two (22) miles lies in paved streets. The entire system at the time it was constructed was bonded in approved manner and conforming to the best practice with copper wire bonds at the joints except where the rails were welded and no bonds required.

Prior to 1916 the type of bond used was located under the angle bar connecting the two rails and consequently was not visible. Since 1916 the type of bond used has been changed and we are now

415 using the outside welded bond which is entirely visible. Where the outside welded bond has been applied, the original bond under the angle bar has been left in place, thus leaving the majority of the track supplied with two bonds at each joint.

Approximately eight-per cent (80%) of the entire city system has been supplied in this manner or else had the rails welded.

Further affiant saith not.

GUY B. TREAT.

Subscribed and sworn to before me this 25 day of February, 1922.

[SEAL.]

ALICE KEPNER,  
Notary Public.

My Commission expires May 28, 1923.

Endorsed: Filed in District Court on February 27, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

416 In the United States District Court for the Western District of Oklahoma.

No. 502.

OKLAHOMA GAS & ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS & ELECTRIC COMPANY, a Corporation, Complainants,

VS.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.  
Defendants.

*Testimony of H. E. Musson, W. J. Pettee, W. R. Emerson, Claude Connally, Minta De Ford, A. F. Binns, B. P. Stockwell, and W. D. Crutcher Before the Corporation Commission on December 31-31, 1921.*

417 (Page 50 of Transcript.)

"Mr. Reiss: Has the Commission or any of the cities anything further to offer?

Mr. Snyder: There was certain information requested in communications to the Company that would perhaps come in in the Commission's evidence. There was a letter of November 8th asking for the terms of the contract existing between the Oklahoma Gas & Electric Company and the H. M. Byllesby Company and the terms on which they operate the plant and the compensation. They were requested to furnish that and then they were requested to furnish information in a letter of December 19, which referred to the remanding of this case back to the Commission. These requests perhaps should be introduced and their responses to the respective letters introduced with them.

Mr. Reiss: With respect to the contract between the Company and H. M. Byllesby Company, there is none and the Commission is familiar with what they get.

Mr. Snyder: I call your attention to the further provision of the letter:

"You will please furnish this Commission with a copy of the contract referred to, or, in the event that you represent that the said arrangement has not been reduced to a contract in writing, then you will please advise in detail the exact relations of the two concerns; the entire duties of the one and the compensation paid by the other."

So the information in the alternative is requested in the event you have no contract.

Mr. Reiss: There is no contract and I think the compensation will be reflected in our report.

Mr. Synder: Is that the only response to that request you have?  
Mr. Reiss: That is the only response."

418 *Testimony of W. J. Pettee, President of the Oklahoma City Chamber of Commerce (Page- 55-59).*

By Mr. Snyder:

Q. What is your name?

A. W. J. Pettee.

Q. You are President of the Oklahoma City Chamber of Commerce?

A. Yes sir.

Q. What business are you in at Oklahoma City Mr. Pettee?

A. The mercantile business, commonly known as the Hardware business.

Q. You have quite a large establishment?

A. Yes sir.

Q. Do you buy for use in your establishment pipes, or do you have pipes for sale in your establishment?

A. Wrought iron pipes, yes.

Q. Do you buy steel pipes?

A. I think it is wrought iron.

Q. Wrought steel pipe it is, isn't it?

A. Yes sir, wrought steel pipe.

Q. Have you, since the adjournment, made any investigation to find out the prices at which you buy the several sizes of pipe?

Mr. Reiss: As I understand it, that is not the class of pipe that we used, and it is not a criterion for the Commission to go by.

Chairman Russell: We might take his testimony.

Mr. Reiss: I want to object to that as not being competent or material.

Chairman Russell: The objection will be overruled. We will take his testimony, and after that we will determine what bearing it has on the case.

Mr. Reiss: I wish to save an exception.

Chairman Russell: We don't want to talk to the witness before he testifies.

Mr. Reiss: He states that it is an entirely different price from what we used in this instance.

419 Chairman Russell: That would be proper then for you to show that later on.

Mr. Reiss: Note our exceptions.

Mr. Snyder: What kind of pipe is it that you have obtained quotations on Mr. Pettee?

A. I take it it is the National Tube Company's full weight wrought type. I take it only from this card here, as I am not a technical man on pipe.

Q. What prices can you obtain small quantities of the several sizes of pipe on? Just state that to the Reporter.

Mr. Reiss: We will offer the same objection to that.

Chairman Russell: The objection will be overruled.

Mr. Reiss: Note our exception.

Chairman Russell: It will be entirely in order to show what the difference is.

Mr. Snyder: What is this pipe you referred to, used for?

A. We use it mostly for all kinds of work, pumps, and in laying pipes to houses, etc.

Q. For gas?

A. Yes sir for gas. Of course you understand that we don't sell much pipe. I think the price is shown here, but we don't handle it very much.

Q. Do you have those prices of to-day?

A. Yes sir.

Q. Will you state them?

A. 2-inch pipe 15.30; 4-inch pipe 48; 6-inch pipe 85.5; 8-inch pipe 1.215; 10-inch pipe 1.585; 12-inch pipe 2.24. There might be a fraction more or less on one or two of those items.

Q. Suppose you are buying pipe in large quantities—you are a merchant and are familiar with the customs of manufacturing establishments, could the pipe be purchased for less than the flat price per foot that you have quoted?

A. I haven't bought pipe in large quantities in several years, but when I do buy it in carloads, it was about 20% less—about 18% I think it was.

Q. The prices you have quoted are jobbing prices?

A. Yes sir, jobbing prices over the counter right now.

A. That is all?

420 By Mr. Reiss:

Q. Where did you get those prices?

A. From my office just now.

Q. Is that what you sell it for?

A. No sir, what I buy it for.

Q. For what kind of pipe?

A. Wrought iron pipe, but I am not a pipe man and cannot tell you exactly about that.

Q. Is that F. O. B. your warehouse here?

A. Yes sir, and with no drayage.

Q. You know the weight of that pipe?

A. Of inch and a quarter (1¼") pipe yes.

Q. Do you know how the weight there will compare with the weight of pipe used in gas construction?

Chairman Russell: What is the weight of that inch and a quarter?

A. Two and a quarter (2¼) pounds.

Mr. Reiss: That is standard pipe?

A. Yes sir, as far as I know.

Q. You don't know whether it is the same kind of pipe used in the system here or not?

A. Not in your system, no sir.

Q. I move that the witness' testimony be stricken out?

Chairman Russell: Can you give us the weight, etc. on the pipe on the various dimensions of pipe you have testified to?

A. Yes sir I think so.

Q. Give us definite information on that as is possible for you to give, and also state the character of the pipe?

A. Yes sir I will. I think this gives the weight right here on this card. Here is the weight card, but I can't testify whether it is correct or not.

Chairman Russell: You had better give us the actual facts.

Mr. Snyder: That's all—is this the kind of pipe you sell for steam use—I imagine if it would hold steam that it would hold gas.

A. You have got me, but I think we do.

Mr. Reiss: As a matter of fact you don't know?

A. No sir.

Chairman Russell: You had better give us the real facts as to that.

421 *Extract of Testimony of W. R. Emerson, Treasurer and General Auditor of the Oklahoma Gas & Electric Company Pages 64-77.)*

Commissioner Walker: How much of that went to the Oklahoma Natural?

Mr. Reiss: Two-thirds of it.

Chairman Russell: Then your company got 13 and  $\frac{1}{3}$ ¢ for each thousand feet of gas they distributed?

Mr. Reiss: Yes sir.

Chairman Russell: What would they get now?

Mr. Reiss: The difference between the 45¢ and the 25¢.

Chairman Russell: That would be 20¢, but the question of leakage probably makes up for that.

Mr. Emerson: I am not in a position to go into that angle of the business.

Mr. Reiss: All you know is that under the contract you would have to pay so much for the gas?

A. Yes sir.

Q. And under the gate rate you have these increases?

A. Yes sir.

Q. And under the gate rate you would have to pay this increase cost?

A. Yes sir.

Q. And whether that is accounted for by the unaccounted for gas you don't know?

A. No sir.

Commissioner Walker: I think that is what we want to know. One way it would be 26¢ and another way it would be 14¢. In other words you are getting 4¢ more than you did under the old contract. This leakage does not consume all of that. That's what I am getting at.

Mr. McKay: You are receiving a higher price for the gas you sold than before the gate rate went into effect?

A. No sir.

Q. I mean for the gas you sell to the consumer?

A. Yes sir.

Q. But you are paying for gas that you don't sell?

A. Yes sir.

422 Q. And the deficit is the result of that situation?

Chairman Russell: You are receiving more and buying less, isn't that true—you are receiving a higher price from the consumer and paying a lower price per thousand feet to the Oklahoma Natural Gas Company outside from the leakage?

A. We are returning more to the Oklahoma Natural because we are paying them for the leakage, which we didn't have to do before.

Chairman Russell: That's where that comes in.

Mr. Snyder: Under the old system they bore the loss, and under the new system you bear it, for the losses that occur in your line?

A. Yes sir.

Q. Have you figured what that loss amounts to?

A. No sir I haven't Mr. Snyder.

Q. That's your only method for accounting for it?

A. Yes sir, that's from the accounting end of it.

Q. Is this the witness that would testify as to the relations of the company with the Byllesby people?

Mr. Reize: If you wish him to do — you may ask him.

Mr. Snyder: You were asked in a communication dated November 9 from the Commission about the inter-relations of the Oklahoma Gas & Electric Company to the H. M. Byllesby Engineering Company or whatever the name is?

A. Yes sir.

Q. You pay certain fees to that Company?

A. Yes sir.

Q. Will you explain to the Commission what that is?

A. We pay an engineering fee of 7.5 on construction and a supervision fee of 2.5 per cent.

Q. 2.5 per cent of what?

A. Of the gross earnings.

Q. In other words, of every dollar you take in, Byllesby & Company get 2.5 per cent?

A. It isn't the Byllesby Engineering Company, but the Management Company.

Q. Does that company pay the salaries and expenses of the officers of the Oklahoma Gas & Electric Company?

A. No sir.

Q. The Oklahoma Gas & Electric Company pays this expense themselves?

A. Yes sir.

423 Q. What does Byllesby & Company do for that 2.5 per cent?

A. They act in an advisory capacity.

Q. Is there anyone representing that company in this city?

A. No sir.

Q. Or participating in the management of this local concern?

A. No sir.

Q. This local concern pays its own officers for managing its business?

A. Yes sir.

Q. And that is true in Oklahoma City, Muskogee, Enid and El Reno and these other places?

A. Yes sir.

Q. Tell us what Byllesby & Company does for that 2.5 per cent?

A. I cannot go into detail on that. This matter has been up before and I really have not had an opportunity to make up a list of all the details of the things that Byllesby Engineering & Management Corporation does for the Oklahoma Gas & Electric Company. Properly speaking they are managers of the company and act in an administrative capacity, and it is true that the Byllesby Company is situated so that a larger part of our purchasing is carried on through them. There are so many advantages the company enjoys through their connection in that way, that they would be hard to enumerate, but that one item is one of the main and most important item-

Q. They are then your purchasing agents?

A. They act in the capacity of purchasing agent and through them we get discounts that we would not otherwise receive.

Q. In other words because of their large business they would be able to buy gas pipes at a much less price than Mr. Pettie could here in a smaller quantity?

Chairman Russell: He doesn't know what Mr. Pettie could buy the pipes for?

A. I wouldn't say particularly as to pipes, but in a general way it is.

Mr. Snyder: Why isn't that true with respect to pipe?

A. I don't know.

Q. You are the head of the Accounting Department here aren't you?

A. Yes sir.

Q. Did you ever see any statement of the tangible benefit received from their service?

424 A. Yes sir very materially.

\* \* \* \* \*

— Will you bring that or those invoices out here to-morrow morning showing what you have actually paid and figure out what benefit you get by reason of the Engineering and Managing services of the Byllesby Company?

A. I will explain to you that the benefit of that is through out contract with the Western Electric and other electric firms. Most of our pipe is purchased locally, and unless we do have need of maybe

ten cars of pipe, we would not send a requisition to the Byllesby Company, but if we had that need, we would do that, and it gives us an opportunity to take advantage of that. As far as pinning me down to each particular item, I couldn't give it to you.

Q. Can you give us an idea as to what it amounts to?

A. No sir.

Q. As a matter of fact the Byllesby Company and the Byllesby Engineering and Management Company and the Oklahoma Gas & Electric Company are all closely allied and have common stockholders?

A. I don't know.

Q. We asked for this information very much in detail at one time. Have that ever been furnished to anyone?

A. I don't know about that.

Q. Have you, among your records anywhere, anything which will show the tangible benefit to the Oklahoma Gas & Electric Company from that supervision you spoke of, for which 2.5 per cent of the gross income is paid?

A. I don't know that I could put my hand on anything tangible.

Q. Do you know of anyone connected with your company that could do that?

A. My opinion of that is that if it was necessary to go into all of the details, it would be well to have the Byllesby concern answer those questions themselves.

Q. You are the concern that are asking for the rate, and you must justify yourselves as to that?

A. Yes sir, and I have pointed out one angle of it—from the purchasing angle, which will amount to thousands of dollars per year, but when you pin me down to how much that is on each particular invoice, I couldn't do that.

Q. You say you didn't get it for the gas properties?

A. I wouldn't say we did or did not.

Q. How much does the gas end of the utility pay to the Byllesby Company—does it pay that 2.5 per cent?

A. Yes sir.

Q. They get 2.5 per cent of all of it?

A. Yes sir.

425 Q. Does it also participate in the financing of your Company?

A. Not the Management Company.

Q. The H. M. Byllesby Company does?

A. Yes sir.

Q. Do you know how much has been paid to them for any discount or commission on the sales of your securities in the past year?

A. I do not know.

Q. Has anything been paid to them?

A. I don't know.

Q. Doesn't your office keep an account of how much—

A. Yes sir, but we don't know whether that is the Byllesby Company or some other broker or you personally. Byllesby & Company are our fiscal agents.

Q. This 7.5 per cent of the cost of construction—what do they do for that?

A. They are engineers on all of our construction work.

Q. Do they pay the salaries and expenses, for instance, of their engineer, Mr. Uhlendorff, or do you pay them?

A. If he is working for us, we pay him.

Q. Does he do any work for which they pay him?

A. He is acting as engineer on all constructive work for them. As far as the details of construction are concerned, I am not prepared to go into that, but all matters of engineering are passed on, and they secure the information and advise us and are in a position to let us call upon them at any time for any information or decision on any matter pertaining to engineering or construction we may have need of.

Q. Do they pay the salary of the men who come here and superintend the work?

A. We pay that.

Q. They simply furnish the man and you pay the salary?

A. That is not necessarily the cost.

Q. What is the cost?

A. We might have men ourselves. It is a matter of management and engineering. They are in an advisory capacity and we can go to them and get any information we want. It is just like you had a construction engineer out here who would tell you how to build a certain piece of equipment in a certain way.

Mr. Reiss: As a matter of fact, they do the designing of all of the work done down here?

A. Yes sir.

Q. And they also map out all of your extensions?

426 A. Yes sir.

Q. There isn't a single piece of the system that they don't advise us about and pass on?

A. That is correct.

Q. They do the general engineering service?

A. Yes sir.

Q. And if it is necessary to send a man here on the ground to do a particular piece of engineering on it, that man is paid for by the company that does that particular work?

A. Yes sir.

Chairman Russell: Di- I understand that you send your plans for all of these extensions and jobs of that kind to Chicago to be figured out for you up there?

A. We don't send them to Chicago, but we advise them about it, and they advise us about every dollar that is spent.

Mr. Reiss: A requisition is made, and if they disapprove of an extension or an investment, it is not made. They have the final word in those things?

A. They have the final say on everything pertaining to construction.

Chairman Russell: This 7.5 per cent is not applied to the gross receipts, but only to the actual construction?

A. Yes sir.

Mr. Snyder: In other words, when you contemplate the laying of a gas line extension, you work it out in your office here and send a blue print of it to them to see if they approve it?

A. We make a map of it.

Q. And send it to them?

A. In an ordinary job we would.

Q. And when it gets there if they approve it all right, and if they do not all right, but the preliminary work is done here at your expense?

A. Not altogether. Of course in just an ordinary extension or something of that kind it would, but on something of a difficult character, the plans would be worked out by them.

Q. Here in Oklahoma City—let's talk about the gas utility here in Oklahoma City—has there been any intricate work of the character you have just referred to by way of making extensions in the local plant for the last year?

A. I am not prepared to say.

Mr. Reiss: For instance the measuring devices—were they made here in Oklahoma City?

A. No sir in Chicago. However, I am not in close enough touch with that to give you the details, I had forgotten about those measuring stations, but that is an item of the last year.

Q. Where are those measuring stations?

427 A. You will have to have the engineer tell you about that.

Mr. Snyder: You will pardon us for asking these questions, but we thought you were the one to explain these things?

A. That's all right.

Q. This Byllesby Engineering & Management Company—does it get anything from the gross receipts?

A. No sir.

Q. Does that Company own any stock in the Oklahoma Gas & Electric Company?

A. No sir.

Q. Who owns that Company?

A. The Standard Gas & Electric Company is the holding company for the Oklahoma Gas & Electric Company and the Byllesby Engineering & Management Company.

Q. Have you records in your office to show the amount paid directly or indirectly to any of these three companies in the past five years?

A. No sir we haven't.

Q. Where are those records kept?

A. I don't know. You asked me directly or indirectly and I wouldn't know about that.

Q. You have a record of what money you pay out don't you?

A. Yes sir.

Q. Wouldn't that show what you pay to the Byllesby Company or the Byllesby Engineering & Management Company, or the Standard Gas & Electric Company?

A. It would show what we sent but not to them.

Q. You keep an account with them?

A. Yes sir.

Q. Doesn't that account show it?

A. No sir.

Chairman Russell: Under what item do you charge that in your operating expenses?

A. The question of the engineering and management that would be easy enough to show, but the Byllesby Engineering & Management Company are behind the Oklahoma Gas & Electric Company, and in the times past and even recently, the Byllesby Engineering & Management Company had paid large accounts for the Oklahoma Gas & Electric Company.

Mr. Reiss: If you didn't have the money they came to your rescue and paid your bills for you?

A. Yes sir.

Q. They financed the Company?

A. Yes sir.

428 Mr. Snyder: They came to their own rescue then.  
(Laughter.)

Mr. Reiss: They looked after the insurance for the Company didn't they?

A. Yes sir.

Q. And have general supervision over your Company?

A. Yes sir.

Mr. Snyder: How is that?

Mr. Reiss: I say they have general supervision over the Company.

A. Yes sir.

Q. And whenever anything is needed H. M. Byllesby & Company step into the breach?

A. Yes sir.

Q. And very often recently they have helped them out and in return for that you have paid them the 2.5 per cent?

A. Yes sir.

Mr. Snyder: Which one of the companies is that that comes to the aid of your company when your company needs money?

A. Either one of them, but ordinarily the Management Company.

Q. And you pay interest on that money?

A. Sure.

Q. When they come to your aid, they are just coming to the aid of their own Company, which they own, by stock holdings?

A. Yes sir.

Q. And you pay them for helping themselves that way?

A. Yes sir.

Q. You are selling preferred stock on the general market and advertising it?

A. Yes sir.

Q. For how much?

A. \$87.50 per share.

Q. Is that stock issued direct and the money received by the Oklahoma Gas & Electric Company, or whose stock is that?

A. I am not in position to answer that question.

Q. I am trying to get at whether or not the Oklahoma Gas & Electric Company is selling its stock for less than par?

A. No sir it is not.

Q. Whose stock is that that is being advertised?

429 A. I cannot answer as I have nothing to do with that Department.

Q. What department is that—the H. M. Byllesby Company?

A. That is the Securities Department.

Q. You are referring to the local Securities Department of the Local Company?

A. I am frank to say I don't know. I see advertising in the local newspapers that the preferred stock of the Oklahoma Gas & Electric Company is for sale—

W. J. PETTEE, recalled by Mr. Snyder for further direct examination, testified as follows:

Q. Mr. Pettee have you supplied yourself with information as to what kind of pipe you handle, and as to whether or not that is pipe used by the Oklahoma Gas & Electric Company in its system in Oklahoma City?

A. This is Merchants Wrought Steel Pipe commonly used for water and gas purposes. The weight of 3-inch 2.6 pounds, 4-inch, 10.8 pound, 6-inch, 8-inch 25 pound, 10-inch 32 pound, 12-inch 45 pounds. I have information I consider correct as to whether the Gas Company uses this class of pipe.

Q. Give us that information.

A. I am informed by reliable authorities this is the character of pipe the Gas Company uses. In some cases they use it without couplings.

Mr. Reiss: We object to this evidence as incompetent, immaterial and irrelevant.

Chairman Russel: We might get his testimony and see if we could get some suggestions from it.

Mr. Reiss: Note our exception.

A. The Gas Company uses this class of pipe, but in some cases they order the pipe without coupling, or use heavier couplings than commonly come with this class of pipe.

A. That is all. Witness excused.

430 R. R. EMERSON, recalled for further cross-examination by Mr. Herndon, testified as follows:

Chairman Russell: You might bring us out the weight of your pipes Mr. Emerson, so that we can show the comparison. Just bring that out with your prices.

Mr. Reiss: You have that in Musson's inventory.

Chairman Russell: That was several months ago, and we want to know about it right now.

Mr. Herndon: What period of time did you cover in this schedule of earnings and expenses under the 25¢ gate rate?

A. July 1921 I think it is.

A. To November 30?

A. Yes sir. They are given on the far side of the sheet.

Q. Mr. Emerson what is the percentage of leakage in the Enid system?

A. I do not know.

Q. Could you figure it out from the figures given here?

A. No sir.

Q. Under this 25¢ gate rate does your Company receive any more for a thousand cubic feet for the gas they sell than they did under the old contract?

A. It seems to me like there was a difference of 5¢ per thousand.

Q. Mr. Reiss: Do you mean are the rates to the consumers higher now?

Mr. Herndon: I mean does the Gas Company get more out of it.

Mr. Reiss: That total shows they do not.

The following colloquy between Mr. Herndon and Mr. Reiss:

Mr. Herndon: But I want him to figure it. These figures cover the four warm months of the year?

A. That is true.

Q. Do you consider that a fair criterion for the other months of the year?

— —

431 H. E. Musson, recalled for further direct examination by Mr. Snyder, testified as follows:

Q. In your reproduction cost exhibit what was the price per hour of common labor which you applied in ascertaining or in determining the cost of the reproduction theory?

A. 50¢ per hour, which was the price the Company was paying in August for common labor.

Q. That is all.

Commissioner Walker: You say that is on your reproduction cost?

A. Yes sir.

Q. What was it on the original cost?

A. That is about—of course that covered a period of seven years and I haven't all of that, but I could get it for you.

Chairman Russell: You say that is the average price that they paid for seven years?

A. The original cost was that, but the replacement cost was as of August this year.

Q. And the original cost was what?

A. On the average I will have to get it.

Mr. Snyder: The actual cost is shown by this exhibit?

A. Yes sir.

Chairman Russell: From your knowledge of the labor situation today, if you had a contract to build a pipe line system in Oklahoma City, would you pay 1920 prices for labor?

A. Not if I could help it. I would get it as cheaply as I could hire it, but as to what the present cost of labor in Oklahoma City is, I am not familiar because I have not checked that up.

Q. That is all.

Mr. Reiss: The relation percentage between the original cost value as found by you and the replacement value as found by you—in other words, how much higher did you find the replacement value on August 1, 1920 to be as compared with your original cost value?

A. That is as of August 1st or rather July 31.

Mr. Reiss: July 31st do you have a total replacement value there of \$2,805,000.00?

A. Yes sir.

Q. And the original cost value of the same date was what?

A. \$1,846,000.00.

Q. How much higher is the replacement cost on August 1, 1921, than the original cost value as you found it in per cent?

A. 34%.

432 Q. Assuming, Mr. Musson, that the plants in Muskogee, El Reno and Enid were built under similar conditions or in similar periods of time as covered by your investigations in Oklahoma City out of the same sort of material, that percentage of increase would apply in those towns as well as in Oklahoma City wouldn't it?

A. Yes sir, if the plants had been built at the same time under similar conditions, and the same quantities of material purchased in relation to the total property.

Q. I think that's all.

CLAUDE CONNELLY, having first been duly sworn, testified as follows upon behalf of the Corporation Commission:

Mr. McKay:

Q. What is your name?

A. Claude Connelly.

Q. Where do you live?

A. Oklahoma City.

Mr. Reiss: I think we can save this testimony by stating that we are paying 40¢ per hour at present as against a 50¢ which was made and paid at the time this valuation was made.

Mr. McKay: I think we had better take his evidence anyway. Do you occupy any official position with the state of Oklahoma, Mr. Connelly?

A. Commissioner of Labor.

Q. How long have you been Commissioner of Labor?

A. Three years approximately.

Q. Do you have occasion in connection with your official responsibilities to inform yourself or to be informed as to the prevailing cost of labor of various classes from time to time?

A. Yes sir.

Q. Will you state in a few words in what way you have occasion to be so informed—in other words, do you have under your jurisdiction one or more bureaus or branches that make a specialty of employing and placing labor?

433 A. Yes Sir we have a number of employment offices under the direction of my office.

Q. In what places?

A. Oklahoma City, Tulsa, Muskogee and Enid.

Q. And these offices report to your general office in the Capitol here?

A. Yes sir, they make a weekly report.

Q. Will you state, if you know, whether the Oklahoma City office has had occasion within the past few months to place what is commonly known as unskilled labor?

A. Yes sir. That is usually a daily occurrence at the Government Employment Office in Oklahoma City as well as in the other places. Common or unskilled labor is the greatest percentage of help furnished.

Q. Do you place these men in groups or maybe one or two at a time?

A. Yes sir.

Q. State in your own way anything you know of which will inform the Commission as to the price of common labor at the present time?

A. At the present time the rate of wages for common labor, as indicated by the records, at our Employment office in Oklahoma City, ranges from 25 to 50¢ per hour, the average being 35 and 40¢.

Q. What can you state if anything as to having placed men in considerable numbers recently—in other words, do the figures you have given, apply to groups of one or two men, or to large numbers of them?

A. Usually the smaller rate represents conditions where the employer wants one man for some special service usually for a short time. However, the prices for labor are general. Sometimes for instance we will get an order for a considerable number of men at the higher rate of pay.

Q. Do you recall any instance which would illustrate that?

A. No sir, I could not give any specific instance at this time. I happened to be in touch with our Oklahoma City office this morning and was informed that the situation with reference to the wages for unskilled labor had not changed within the past few weeks.

Q. Have you any or do you know whether your office placed recently a crew of common laborers with the Oklahoma Railway Company?

A. Yes sir I am so informed.

Q. Can you state under what wage conditions they were employed?

A. \$2.50 a day of nine hours.

Q. And do you think of any other instance similar to that wherein men in considerable numbers were placed—di- you place any railroad labor?

A. I want to change the statement that I had just made. The report that I received was that the Oklahoma Railway Co., was paying 25¢ per hour for common labor, as represented by the report in the office in Oklahoma City, and that the railroad had placed orders with our office for men at \$2.50 per day of nine hours.

434 Q. Is there anything further that you think of that would give the Commission any information?

A. That's all I believe.

Chairman Russell: I notice here just a clipping in the morning paper some statistics on market and credit which shows that the price of labor on the farm has decreased from an average of \$42.00 in 1920 to \$22.00 in 1921 with board furnished. Do you have any knowledge of Oklahoma Farm wages and do you furnish men for work on farms at this time?

A. Not at the present time.

Q. Do you know is is in any way indicative of the farm labor conditions in Oklahoma?

A. I could not say as we have had very few calls for farm laborers since the seasonal crop had been harvested this year.

Q. That's all?

Mr. Reiss: You yourself don't employ any labor do you?

A. Except in connection with my department?

Q. When you speak of unskilled or common labor you mean ordinary ditch diggers or men to do work of that character do you not?

A. The class of labor referred to by the Railroad Company and for the usual railway work is, I suppose, just track laborers.

Q. Do you consider the wage scale being about as you have indicated it there as being high or low?

A. I should consider that abnormally low, as compared with the average.

Q. Is this condition a condition that is going to continue permanently, or is that only a temporary proposition in your opinion?

A. I haven't any way of knowing.

Q. What is your idea about that?

A. I haven't any opinion.

MINTA DE FORD, having first been duly sworn testified as follows upon behalf of the Oklahoma City Chamber of Commerce:

By Mr. Snyder:

Q. What is your name?

A. Minta De Ford.

Q. What is your business?

435 A. Bookkeeper and Office Manager for Andy F. Benz.

A. What is his business?

A. Plumbing.

Q. In that capacity do you come in contact with people applying for jobs in Oklahoma City?

A. Yes sir.

Q. You are one who does the employing there?

A. Yes sir.

Q. What is common labor obtainable for in Oklahoma City at the present time?

A. At from 35¢ to 45¢.

Q. And is it plentiful at that rate?

A. Yes sir.

Q. You have numerous applicants for work at those figures?

A. Probably from 30 to 50 per week.

Q. The supply of common labor in Oklahoma City at this time is abundant?

A. Yes sir.

Q. That is all?

Mr. Reiss: That's all.

*Testimony of A. F. Benz.*

By Mr. Snyder:

Q. What is your name?

A. A. F. Benz.

Q. Where do you live Mr. Benz.

A. Oklahoma City.

Q. What is your business?

A. Plumbing business.

Q. You have occasion to employ men and keep yourself familiar with the labor market?

A. Yes sir.

Q. What can reasonable efficient common labor be obtained for in Oklahoma City at the present time?

A. From 30 to 45¢ owing to the class of labor you want.

436 Q. For digging ditches for instance?

A. From 30 to 35¢ for ditch diggers or pick and shovel men as we call them.

Q. Are you familiar with the character of labor necessary to lay gas pipes?

A. Yes sir.

Q. What class of labor is that?

A. Common or pick and shovle men.

Q. And men are available for that work in Oklahoma City at the present time at what?

A. Around 30 to 35¢.

Q. And the supply is plentiful?

A. Yes sir, we are turning them away every day.

Q. Are you familiar with the prices paid for such as are used—Are you familiar in the first place with the character of type used in the distributing system of the Oklahoma Gas & Electric Company in its gas department in Oklahoma City?

A. Yes sir.

Q. Do you know what character of type that is?

A. Yes sir.

Q. Are you familiar with single carload lot prices of pipe of the following dimensions: 2 inch, 3 inch, 4 inch, 6 inch, 8 inch, 10 inch and 12 inch at the present time laid down here in Oklahoma City?

A. Yes sir.

Q. Will you state for what you can purchase at one carload quantities 2-inch pipe such as is used in this system here?

A. Do you want this for welding purposes?

Q. How do your figures show?

A. Line pipe.

Q. Give the line pipe and the other as covered by percentage?

A. Yes sir, 2-inch 13.31 per hundred feet.

Q. Now 3-inch pipe?

A. 37.50 per hundred feet.

Q. 4-inch pipe?

A. 42.26.

Q. 6-inch pipe?

A. 74.43.

437 Q. 8-inch pipe?

A. 103.70.

Q. 10-inch pipe?

A. 135.91.

Q. 12-inch pipe?

A. 191.11.

Q. What are the weight of the respective dimensions of pipe that are there that you have testified to?

A. 2-inch, 3,678; 3-inch—They could just take one of these cards and get that.

Mr. Reiss: There will be no objection to that.

Chairman Russell: Is that card correct?

A. It is presumed to be correct as anyone can get at it. Pipe varies and the same identical dimensions may weigh half a pound more in one case than in another, but this is the standard.

Chairman Russell: This pipe you have referred to in your testimony—is that standard pipe?

A. Yes sir.

Mr. Snyder: Will you identify this as Benz Exhibit No. 1 (Exhibit so identified). This is the kind of pipe they are using in the gas system here?

A. Yes sir. There being no difference except the line pipe is heavier coupling. It is the same type.

Q. There is a price column on this card Mr. Benz on your Exhibit No. 1 for the respective sizes referred to?

A. Yes sir for screw pipe in one-foot or two foot or twenty foot sizes. This is the ordinary daily market that you could go to the wholesale houses and buy it for.

Q. But the price you first specified to was in single carload lots laid down in Oklahoma City?

A. Yes sir, in single carload lots laid down in Oklahoma City.

Q. Suppose you were buying as many as fifteen carloads—the sheet market Benz' Exhibit No. 2 represents the prices on that same weight of pipe described on Benz' Exhibit No. 1, laid down in Oklahoma City in single carload lots for the respective sizes made?

A. Yes, except the heavy couplings as quoted on this, and this is standard coupling. The tubes are the same.

Q. Suppose you were buying that in as many as fifteen or one hundred carloads at a time. What would you get it for?

A. Possibly 10% discount.

A. I am afraid I don't know how to ask you this question, but is there some difference between these prices and these heavy couplings?

A. Sure there is a difference of 10%. The pipe is prepared for welding and screw pipe is different. If it is for welding the prices are 10% lower. But this is for screw pipe.

Q. So that the prices for the kind they generally use here is 10% off of this?

A. Yes sir.

Q. Then if you buy a large number of carload, you would get a 10% discount off of that?

A. Yes sir.

Q. That is all?

A. If you want to buy that amount of stuff, however, you would go to the mills for it.

Q. This is a quotation of use to-day from whom?

A. Crane & Company.

Q. They maintain a local distributing house and are large dealers in this kind of stuff?

A. Yes sir.

Q. That is all.

By Mr. Reiss (page 114):

Q. Did Mr. Georgia, the Manager of Crane & Company, tell you that he would give you 10% discount from this if in carload lots?

A. Yes sir.

Q. Mr. Georgie told you that himself?

A. Yes sir.

Q. And also 10% off on the pipe for welding.

A. Yes sir.

Q. That's all.

Mr. McGinnis: Would this same price be applicable to a purchaser in Muskogee considering the difference in freight rates?

A. Yes sir.

Q. Crane & Company have a branch house in Muskogee?

A. Yes sir.

Q. May be agree then that his testimony along that line may apply in the Muskogee case also?

Mr. Reiss: Any testimony taken in this case as far as it is applicable may be applied to the Muskogee case.

439 Mr. McGinnis: You have no objection then to the testimony of this witness being incorporated in the Muskogee case, with the understanding that the freight rates should be considered?

Mr. Reiss: No sir.

Mr. McGinnis: That is all.

*Testimony of B. P. Stockwell, Gas & Electric Engineer, for the Corporation Commission (Pages 115-116).*

By Mr. Snyder:

Q. What is your name?

A. B. P. Stockwell.

Q. What position do you hold with the Corporation Commission of the State of Oklahoma?

A. Gas & Electric Engineer.

Q. Have you examined this Musson Exhibit No. 1 and Musson Exhibit No. 2 to ascertain the quantities of pipe, which those exhibits show to be in the system?

A. I examined the Musson Exhibit No. 1 for that purpose.

Q. The itemization in that is the same as in Musson Exhibit No. 2?

Mr. Reiss: I should think so.

Chairman Russell: They will show for themselves.

Mr. Snyder: What is the quantity of pipe as shown by that Exhibit in this system?

A. There are 7,507 ton of wrought steel pipe listed in this inventory; 1,568 ton of case iron pipe listed in this inventory. That does not include the additions and betterments since the date of this inventory.

Q. You have no data as to what that amounts to?

A. No sir. I have this figure in carload lots.

Q. How many carload would it be?

A. In carload lots that would be 326.4 cars of wrought steel pipe and 86 cars of cast iron pipe, and 412.12 cars of pipe altogether.

Q. Have you figured any weight on the different kind of pipe, or have you figured inches and feet on the different sizes of pipe?

A. Yes sir.

Q. Give them.

A. I haven't that in cars.

Q. I mean in feet on the different sizes of pipe?

440 A. 295 feet of inch and a quarter; 1,694 feet of inch and a half; 29,197 feet of 2 inch; 10,555 feet of 2.5 inch pipe; 12,652 of 3-inch pipe; 555,102 feet of 4-inch; 224,920 feet of 6-inch; 700,170 feet of 8-inch; 52,982 feet of 10-inch; 21,332 feet of 12-inch. The pipe I have just named is wrought steel pipe, and in the cast iron pipe there is 4,385 feet of 4-inch pipe; 78,854 feet of 4-inch pipe; 18,758 feet of 6-inch pipe; 14,653 feet of 8-inch pipe; 4,575 feet of 10-inch pipe and 423 feet of 12-inch cast iron pipe. These figures are according to Musson Exhibit No. 1. That is, pipe line and the carloads I have given represent the pipe line with no fitting regulators, drips, meters or anything of that kind.

Q. You know about the prices of this cast iron pipe?

A. I haven't present quotations on cast iron pipe.

Q. Take the witness—there is no other matter that you have that you are ready to testify to?

A. I don't think so.

W. R. EMERSON, recalled by Mr. Snyder, testified as follows (pages 155-156):

Mr. Snyder: We will put this in as an Exhibit. Mr. Emerson these instruments represent invoices of recent purchases of pipe and show the size of the pipe and the price paid?

A. Yes sir.

Q. Has your company at this time on hand a depreciation reserve fund?

A. A depreciation reserve fund set up?

Mr. Reiss: Do you mean on hand? The actual cash deposited some place?

Mr. Snyder: Yes sir.

Mr. Emerson: No sir.

Q. Have you a depreciation reserve account?

A. We have a depreciation reserve account I think possibly. I cannot recall off hand just the amount of it, but it is approximately \$250,000.00 I think.

Mr. McKay: When was that account set up, do you know.

A. That account is made from time to time with small amounts added to it, usually in December of each year.

Q. It has been carried regularly through a period of several years?

441 A. It has not been carried regularly, but from time to time as the Company had earnings that they could spare, as the account was so set up.

Chairman Russell: No repair bills or maintenance bills are charged to this account?

A. No sir.

Chairman Russell: The repairs are all charged to current expenses?

A. Yes sir.

442 In the transcript of the testimony before the Corporation Commission at the hearing held December 30-31, 1921, the following colloquy occurred between counsel and the members of the Commission; Chairman Russell being the Chairman of the Corporation Commission, Mr. Reiss and Judge Rainey being attorneys for the utilities, and Mr. Snyder being attorney for the Oklahoma City Chamber of Commerce:

(Pages 124-127:)

"Mr. Snyder: That leaves then, so far as I know, of but one other thing to be attended to, and that is the question of Mr. Duvol's testimony.

Chairman Russell: I think the Company will agree with you that the Kansas Utility Board adopted 200,000 cubic feet per year per mile of 3-inch equivalent as their standard, and our Mr. Duvol said he thought that they would do well to get it down to 500,000 feet.

Mr. Reiss: We will admit he will testify to that, but we will not admit that it is the proper thing to do.

Mr. Snyder: What was his testimony before?

Chairman Russell: That the Kansas Utility Board had adopted 200,000 cubic feet per year per mile of 3-inch equivalent main, and our Mr. Duvol has testified that in his judgment 500,000 cubic feet per mile of 3-inch equivalent was as low as we could hope to get it, and that to attempt to reduce it below that is worth more than the gas main would amount to.

Mr. Reiss: If Mr. Duvol were present he would testify to the statement just made by the Chairman of the Commission, and in order to get this case closed at the present time, we are willing to concede he would so testify, but we do not concede that his statement is in any way binding on the Company.

Mr. Snyder: That is agreeable, but with this statement that Mr. Duvol is a man who has devoted considerable time to this kind of work, and is the man employed by the Commission on that work.

Mr. Reiss: I will admit he is employed by the Corporation Commission on that work, but I will not admit his qualification in any manner, shape or form.

Chairman Russell: He has had the actual charge of the work here, and has had experience in that work and has done the actual work done in Bartlesville, where he had charge and the leakage was reduced more than 10%.

Mr. Reiss: The facts are that in the City of Bartlesville his statements were not borne out by the facts.

Judge Rainey: I understand this Commission has never fixed a standard of leakage that should be adopted.

Chairman Russell: As per mile of 3-inch main, no, but we have been lumping it off together.

443 Judge Rainey: There is an opinion by the Circuit Court of Appeals, that the Commission has a right to prescribe a standard of leakage, and until that it is done, the Company has a right to charge sufficiently to bring their system up to the standard, and after they have that standard if they do not operate on that standard they can be penalized. This Commission, however, has never prescribed a standard for gas distributing companies in this State.

Chairman Russell: As to the mile of 3-inch main or any other standard basis we have none.

Judge Rainey: All right then.

Mr. Snyder: In view of the fact that before a rate is fixed in this particular matter, the fact that the Commission has not fixed a standard of 10% or 5% as a standard of leakage, is no reason why the citizens of Oklahoma City should be required to pay for 20%.

Chairman Russell: I might say that one of the reasons the Commission could not arrive at a certain decision is because of the variable testimony before us. A year ago we had testimony before us that in Enid the leakage was a little less than 2% and in Oklahoma City it was 15%, and in Muskogee about 40 to 50%, and yesterday we had testimony that the leakage in Oklahoma City is well above 20% and increasing steadily, and that in Muskogee it is below 14% and declining steadily, and in view of the conflicting testimony of that kind before the Commission, it is impossible for this Commission to arrive at a decision of what a reasonable leakage should be.

Mr. Reiss: I think your remarks are correct except that you have not gotten your testimony on information from the same sources. The testimony a year ago was from the Oklahoma Natural Gas Company and at the present time I am free to confess that the records or measuring stations have not been in existence long enough to determine what the leakage really is.

Chairman Russell: I am sure that is true."

W. H. CRUTCHER, Superintendent of gas department of the Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company, in charge of their investigations into the question of unaccounted for gas, was asked and answered as follows (Pages 88-90):

"Chairman Russell: Do you have any idea of why the loss, according to your last report, is only a little over half of what it was in the other towns—have they been conducting a leakage campaign there in Muskogee?

A. Not a leakage campaign, but we have been doing considerable work there.

Q. I notice the loss in Muskogee is declining there and increasing in other places?

A. At the first part of the year we did considerable work in stopping the leaks there.

444 Mr. Reiss: As a matter of fact, the line owned by the city has been cut out entirely, and that was done by the city and not by you?

A. There was a long line connected with our system that belonged to the city that we insisted be removed and which reduced our leakage considerably.

Q. And there was also a line that was owned by the Oklahoma Natural Gas Company that was disconnected?

A. The line of the Oklahoma Natural is not considered. If we consider the lines of the Oklahoma Natural in supplying Muskogee, our figures might not be correct, but these are figures inside of our own city gate.

Mr. Snyder: The work of tightening up the Muskogee plant has that been much of a burden?

A. We have gone as far as we could.

Q. It has not been abnormally expensive?

A. I think you will see that our deficit or loss in Muskogee will be considerable owing to the operating expenses.

Q. Do you put all those expenses in your operating expenses?

A. It is a part of that.

Q. And there is no reason why the same degree of tightness in the system in the other towns should not exist as it is in Muskogee?

A. Of course local conditions make it such that the same thing could be or could not be done in the other towns.

Q. Is there any such dissimilarity between Oklahoma City and Muskogee that would make it impossible, with prudent expenditure, to place Oklahoma City in the same condition as the Muskogee plant is with respect to leakage?

A. I don't exactly understand the question.

(Reporter reads question to witness.)

I don't know of any.

Q. As a matter of fact the condition in Muskogee can be improved?

A. Yes sir.

Q. With prudent expenditures?

A. I wouldn't say they have any. It would be very problematical as to whether the benefit to be reached by an expenditure of a considerable sum of money would be offset by the amount saved.

Q. The physical value of a gas distributing plant would be more or less dependent upon whether or not it was tight or loose of the question of leakage, would it not? In other words, a leakage plant, even though the physical elements are the same as in a tight plant would not be worth so much?

A. If you are assuming a tightening up of the joint, that would be a different matter.

Q. A leaky system is not worth as much, other things being equal, as a tight system?

A. Oh, no."

of January 4th, 1921, which was sent to the Commission for use in the Oklahoma Gas & Electric and Muskogee Gas & Electric Companies' hearings before the Commission, pursuant to arrangement made at the time of such hearing dealing with the subject of labor costs in Muskogee at or about the time of such hearing; namely:

"January 4th, 1921.

Honorable Campbell Russell,  
Chairman Corporation Commission,  
Building.

SIR:

Complying with the request made of me at the hearing of the Oklahoma Gas & Electric Company last week, I have before me a statement from the Superintendent of our Muskogee Employment office advising that the wage scale for common or unskilled laborers ranges from twenty-five (25) cents to forty (40) cents per hour, with an average perhaps of thirty-five (35) cents per hour. A few calls have been received for laborers by the Muskogee office with pay stated to be as low as twenty (20) cents per hour.

Respectfully,

(Signed)

CLAUDE E. CONNALLY,  
*Commissioner of Labor."*

446 STATE OF OKLAHOMA,  
*Oklahoma City, ss:*

G. F. Smith of lawful age having been first duly sworn on his oath, deposes and says that he is the Secretary of the Corporation Commission of the State of Oklahoma, and as such has charge of the books, records, and general files of said Commission; that the attached and foregoing excerpts of testimony of witnesses appearing before the Corporation Commission in Cause No. 4302 in the matter of gas rates at Oklahoma City, El Reno, Enid, Yukon, Britton and Muskogee on December 30-31, 1921, are true and correct copies of said testimony taken from the original on file with the Corporation Commission of the State of Oklahoma.

[Seal of Corporation Commission of Oklahoma.]

G. F. SMITH,  
*Secretary of the Corporation Commission.*

Subscribed and sworn to before me this 23rd day of February, 1922.

[Seal of John S. Gram, Notary Public, Oklahoma County, Okla.]

J. S. GRAM,  
*Notary Public.*

My commission expires Jan. 1, 1923. .

Endorsed: Filed in District Court on February 25, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

447 In the District Court of the United States for the Western District of Oklahoma.

No. 496. Equity.

OKMULGEE GAS COMPANY, Plaintiff,

v.

CORPORATION COMMISSION OF STATE OF OKLAHOMA et al.,  
Defendant.

No. 501. Equity.

OKLAHOMA NATURAL GAS COMPANY, Plaintiff,

v.

CAMPBELL RUSSELL et al., Defendants.

No. 502. Equity.

OKLAHOMA GAS AND ELECTRIC COMPANY et al., Plaintiffs,

v.

CORPORATION COMMISSION OF STATE OF OKLAHOMA et al.,  
Defendants.

448 Mr. E. S. Ratliff, Mr. W. P. McGinnis, Mr. A. L. Burt, Mr. M. B. Cope, Mr. W. C. Herndon, and Messrs. Asp, Snyder, Owen & Lybrand, for Defendant.

Mr. C. B. Ames, Mr. T. G. Chambers, Mr. Russell G. Lowe, Mr. D. A. Richardson, for Complainant.

Before Stone, Circuit Judge, and Pollock and Cotteral, District Judges.

*Opinion.*

STONE, Circuit Judge:

This is an application for a temporary injunction to restrain the enforcement of certain gas rates on the ground that such rates are confiscatory. The complaint alleges that the complainant is a public service corporation furnishing natural gas to consumers within the State of Oklahoma; that the rates in question had been established under orders of the Corporation Commission of the state and had been in force and operation for some time; that complainant made application to the Commission for higher rates; that this application was fully heard upon voluminous evidence and resulted in an order denying such application; that complainant, thereafter,  
449 appealed from this order to the Supreme Court of the State; that it applied for a supersedeas, or stay, of the order of the

Commission pending this appeal, which was denied; that such appeal is now pending. The above situation is conceded.

I think the application for a temporary injunction should be denied upon the ground that it is premature. I am compelled to this conclusion by my understanding of the decision in *Prentis v. Atlantic Coast Line*, 211 U. S. 210. That case was an attempt to enjoin (as confiscatory) railway rates established by orders of the State Corporation Commission of Virginia.

The Method of regulating public utility rates in Virginia, as there outlined in the opinion of Mr. Justice Holmes (page 224), was as follows:

"The state constitution provides that the commission in the performance of the duty just mentioned, shall from time to time prescribe and enforce such rates, charges, classification of traffic, and rules and regulations, for transportation and transmission companies doing business in the State, and shall require them to establish and maintain all such public service facilities and convenience, as may be reasonable and just. Before prescribing or fixing any rate or charge, etc. it is to give notice (in case of a general order not directed against any specific company by name, by four weeks' publication in a newspaper) of the substance of the contemplated action and of a time and place when the commission will hear objections and evidence against it. If an order is passed, the order again is to be published as above before it shall go into effect. An appeal to the Supreme Court of Appeals is given of right to any party aggrieved, upon conditions not necessary to be stated, and that court, if it reverses what has been done, is to substitute such order as in its opinion the commission should have made. The Commission is to certify the facts upon which its action was based and such evidence as may be required, but no new evidence is to be received, and how far the findings of the commission can be revised perhaps is not quite plain. No other court of the State can review, reverse, correct or annul the action of the commission, and in collateral proceedings the validity of the rate established by it cannot be called in doubt.

When a rate has been fixed, the commission has power to enforce compliance with its order by adjudging and enforcing, by its own appropriate process, against the offending company the fines and penalties established by law. But a hearing is required, and the validity and reasonableness of the order may be attacked again in this proceeding, and all defenses seem to be open to the party charged with a breach."

Pending such an appeal from the Commission, a supersedeas might be allowed (p. 234).

450 The method of regulating public utility rates in Oklahoma is identical with the above outlined Virginia method and so conceded to be by all parties hereto.

The complaints in the *Prentis* case were filed after the Commission had made the orders establishing rates, but before publication of the ordered rates, and without any appeal being taken from the

action of the Commission. The Supreme Court held that "the most plausible objection" to the bills was that "they were brought too soon" (p. 229), and that objection ruled the decision of the case. Why the Court, in that case, thought those bills brought too soon is of controlling importance in the matter now before this court. If the Prentis decision was based upon the view that those bills were premature because the courts should not interfere until the legislative process of rate making had become final and that such process did not (in Virginia) become final until the Supreme Court of Appeals had reviewed the orders of the Commission or until the time for taking such review had passed, then the bill in this case must be held premature. However, counsel seek to escape this evident conclusion by distinguishing the Prentis case. The claimed distinction is that the rates ordered by the Commission in that case were no-operative when those bills were filed because there had been no publication of the rates as required by law; while here, the order of the Commission was effective pending the appeal. It may, or may not, be that the Supreme Court might have based its conclusion that the bills were premature upon the fact that the rates had not been published when the bills were filed. What that court might have done there is answered by what it did. The lack of publication of the rates had absolutely nothing to do with and is not even mentioned in the statement of the reasons why the court thought those bills premature. The sole reason stated why the court regarded those bills premature was because the legislative process of rate making had not become final, either by determination of the review provided by the Virginia law or by failure to seek  
451 review within the time allowed by such law. No other reason is anywhere suggested in the majority opinion. This thought is expressed three separate times in connection with that many different phases of the case. The first of these expressions (p. 230) is in connection with the general aspect of the matter and is as follows:

"The State of Virginia has endeavored to impose the highest safeguards possible upon the exercise of the great power given to the State Corporation Commission, not only by the character of the members of the commission, but by making its decisions dependent upon the assent of the same historic body that is entrusted with the preservation of the most valued constitutional rights, if the railroads see fit to appeal. It seems to us only a just recognition of the solicitude with which their rights have been guarded, that they should make sure that the State in its final legislative action would not respect what they think their rights to be, before resorting to the courts of the United States.

If the rate should be affirmed by the Supreme Court of Appeals and the railroads still should regard it as confiscatory, it will be understood from what we have said that they will be at liberty then to renew their application to the Circuit Court, without fear of being met by a plea of *res judicata*. It will not be necessary to wait for a prosecution by the Commission."

The second of these expressions is in connection with the claim, of certain of those complainants, that the State had bound itself by contract not to reduce the rates. The Court said (p. 231):

"If the State has bound itself by contract not to cut down the rates as contemplated, there would seem to be no reason why the suit should not be entertained now. See *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362, 393. But it would be premature and is unnecessary to decide whether the State has done so or not. No rate is irrevocably fixed by the State until the matter has been laid before the body having the last word. It may be that that body will adhere to the old rate or will establish one that will not be open to the charge of violating the contracts alleged. The contracts alleged do not prohibit a certain reduction if the profits heretofore realized have exceeded a certain amount. On the question of contract as on that of confiscation it is reasonable and proper that the evidence should be laid, in the first instance, before the body having the last legislative word."

The third expression was in connection with the suggestion that the time for taking the review from the Commission had expired (at the time the opinion was filed). To meet that situation, the court said (p. 232):

"As our decision does not go upon a denial of power to entertain the bills at the present stage but upon our views as to what is the most proper and orderly course in cases of this sort when practicable, it seems to us that the bills should be retained for the present  
452 to await the result of the appeals if the companies see fit to take them. If the appeals are dismissed as brought too late the companies will be entitled to decrees. If they are entertained and the orders of the commission affirmed, the bills may be dismissed without prejudice and filed again."

Not only is the opinion in the *Prentis* case very clear as to the reason for the decision of the court, but the Supreme Court has, in the case of *Bacon v. Rutland R. R. Co.*, 232 U. S. 134, 137, stated the scope of the *Prentis* case as follows:

"The defendants rely upon *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210, 229, 230. The ground of that decision was that by the state constitution an appeal to the Supreme Court of Appeals from an order of the State Corporation Commission fixing rates was granted, with power to the Court to substitute such order as in its opinion the Commission should have made. The Court was given legislative powers, and it was held that in the circumstances it was proper, before resorting to the Circuit Court of the United States, to make sure that the officials of the State would try to establish an unconstitutional rule. But it was laid down expressly that at the judicial stage the railroads had a right to resort to the courts of the United States at once. p. 228. Therefore before that case can apply it must be established at least that legislative powers are

conferred upon the Supreme Court of the State of Vermont." Also see

Detroit & Mackinac Ry. v. Michigan R. R. Commission, 235, U. S. 402, 404.

In view of the above, I am unable to find any basis for the distinction which counsel urge with commendable zeal and ability. It is true that an appellate court may disregard the reasoning of a trial court and reach the same conclusion in its own way; but, when the highest court has arrived at a given result by a clearly defined path, that same result must be reached by all lower courts which find that path before them. The circumstances that the Supreme Court had before it another path to the same end and did not take it, emphasizes the choice of the one taken.

453 COTTERAL, *District Judge* (concurring):

The Prentis case settled all controversy as to the right of suit against confiscatory rates imposed by state tribunals, although vested with judicial functions in another capacity. It was also held in that case that the stage at which injunction may appropriately interfere, from a standpoint of comity, is when the rates become a finality by the action of the reviewing court, in the exercise of legislative authority, upon appeal effectually taken, and that meantime a bill assailing rates in a Federal Court will be premature and should be dismissed, with leave to renew it, if the rates should be affirmed. In these cases before us, the appeals were legally taken to the State Supreme Court, and have been awaiting appellate review, in due order, during the pendency of the motions for preliminary injunctions in this court, and it develops have been argued and submitted for decision by that court.

The Prentis case differs from these in the fact that here the rates complained of are in force and those prescribed by the Virginia Commission were not, and the question presented to us at the outset in these cases is whether the rule of comity should be given in the present situation. In other words, whether it must give way to the application of the fixed doctrine, under the Constitution of the United States, that rates imposed upon utility companies which do not yield a fair return on the reasonable value of property devoted to public use cannot be upheld because wanting in due process of law. (*Willcox v. Consolidated Gas Co.* 212 U. S. 41.)

In the case of *Love v. A. T. & S. F. R. Co.*, 185 Fed. 321, a temporary injunction was sustained on appeal, where an arbitrary fiat of the State Constitution reduced the passenger rates of railroads without any privilege of appeal, and the State Commission reduced the freight rates and supersedeas was denied, during the pendency of appeal. Are there circumstances in this case which require a different result?

454 I have finally reached the conclusion that the answer should be in the affirmative. In the first place, the State Supreme Court, in the case of the Oklahoma Natural Gas Company,

while doubting authority for a supersedeas, has rested a denial of it on the ground that there was an insufficient showing by the gas companies. Putting aside the supposed effect of this decision, illustrative of the views of that court, as an adjudication, the allowance of a temporary injunction necessarily involves a review and revision of the same. This the properties would hardly sanction, if it is avoidable. The appeals will doubtless have precedence and be disposed of promptly, under the mandate of the State Constitution (Art. 9, Sec. 21), and be determined perhaps approximately as soon as our decision may be reached on the full showing before us, which might be in vain and would be so, should there be a modification of existing rates. It must be considered that the complaint here is not of a direct reduction of rates but a refusal to adequately lift those alleged to have become non-remunerative. There is the analogy of a temporary withholding of relief in a Federal Court by a writ of habeas corpus to a petitioner under accusation by State authority, as mentioned in the Prentis case.

Finally, it is urged justifiably that if the plaintiffs shall prevail in the State Supreme Court, not only is the present action by the court meantime presumably correct (*Des Moines Gas Co. v. Des Moines*, 238 U. S. 163), but that court has the duty to substitute such order as the Commission should have made at the time (*Oklahoma Const.*, Art. 9, Sec. 23), and in this way restore to the complainants such compensation as they may be entitled to and may have temporarily lost by the rulings of the Commission.

From these considerations, the temporary injunctions in these cases should be denied as prematurely sought, and I therefore concur in the decision to that effect.

455 In the District Court of the United States for the Western District of Oklahoma.

No. 496. Equity.

OKMULGEE GAS COMPANY, Plaintiff,

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CORPORATION COMMISSION OF STATE OF OKLAHOMA et al.,  
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CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.,  
Defendants.

(POLLOCK, J., dissenting:)

The above suits were brought to restrain the enforcement of orders of Corporation Commission of the State of Oklahoma on the ground compliance therewith by complainants will work a confiscation of the property of complainants, destroy their business and  
456 bring them to bankruptcy. Restraining orders on reasonable terms and conditions have been granted to complainants, are now in full force, and the matter stands fully heard, argued and submitted on voluminous proofs and arguments of solicitors for temporary injunctions.

At the threshold of these cases we are confronted by the contention on the part of defendants therein these suits are prematurely brought for that at the time the orders of temporary injunction were applied for, and now, the legislative power by the State ordained for the fixing and establishing of the rates for service sought to be enjoined had not been fully completed and ended, and the case of *Prentis v. Atlantic Coast Line*, 211 U. S. 210, is cited and relied upon as conclusive of this contention, and such is the view adopted by a majority of this Court. That case arose in the State of Virginia. The provisions of the Constitution of Virginia under which the controversy arose are conceded to be identical or like those of the State of Oklahoma involved in this controversy, which confers legislative as well as judicial powers upon the Supreme Court of the State in rate-

making cases on an appeal to the Supreme Court from an order of the Corporation Commission fixing rates.

It has been many times held and is the settled law of this country the facts of any given case defines the nature and fixes the principles of the law of decision applicable thereto. Of necessity, it follows, any principle of the law declared in any given case not applicable to or based upon the peculiar facts of that case is merely obiter dictum, decides nothing, binds no one, and may be safely ignored as furnishing no binding precedent.

Applying this principle of the law to the facts of the Prentis case, and what is found decided therein? Namely, the obvious and conceded principle of the law that no injunctive relief will be granted by a court of equity against the threatened enactment of a law, no matter how disastrous or oppressive such law may become if once enacted and established as the law of the land. That such were the facts of the Prentis case is apparent from the statement thereof made  
457 by Mr. Justice Holmes, as follows:

"These are bills in equity brought in the Circuit Court to enjoin the members and clerk of the Virginia State Corporation Commission from publishing or taking any other steps to enforce a certain order fixing passenger rates."

Under the law of Virginia then in force the order of the Corporation Commission of that State, like the many legislative acts of the various states, had no binding force or effect as law until publication thereof had been made. In other words, the publication of the order of the Commission in that case was a necessary preliminary legislative step in the enactment of the law before enforcement thereof became possible. It is true, the right of the railway companies affected by the order of the Commission to apply to the Supreme Court of Appeals of that State sitting in its legislative capacity for a review of the order of the Commission, and the failure of the railway companies to take such appeals prior to the institution of that suit, is much commented upon by the court in its opinion. But, in its last analysis, that which was sought to be restrained in that case by the railway companies was the completion of the exercise of legislative power in the making of a law and not the administrative power employed in enforcing a confiscatory law once fully made complete and in full force and effect until set aside by some additional legislative body sitting with power to review and unmake the legislative enactment. How different, it seems to me, are the facts in the cases at bar. Here, the legislative body created by the State of Oklahoma, sitting with full power to enact into law the rates in question, did enact orders into laws of the State with full operation and power of enforcement against complainants by severe penalties for non-compliance therewith. It is true, in the cases at bar, as in the Prentis case, complainants had the right of appealing to the Supreme Court of the State of Oklahoma sitting under the Constitution of that State not as a court exercising judicial

power, but as an additional legislative body created for a review and correction of the legislative acts or orders of the Commission.

458 However, such appeals were taken by complainants in the instant cases and a suspension of the enforcement of the orders made by the Commission as law during the pendency of such appeals was applied for but denied by the Supreme Court of this State, thus leaving complainants remediless at law and subject to the full and complete enforcement of the orders of the Commission as law, unless enjoined, until final review had by the Supreme Court.

Now it is quite positively charged in the bills of complaint that the operation of these orders of the Commission, if obeyed by complainants until the Supreme Court of the State can or will act in the matter of review will work a confiscation of the property of complainants, ruin their business, and bring them into bankruptcy. On the other hand, if complainants take the hazard of violating these orders so made by the Commission until the Supreme Court shall pass upon them in review, and the orders shall be ultimately upheld, the fines and penalties of the law which will be enforced against them will be so great and burdensome as to bring ruin and disaster to the property and business of complainants. Thus, the question presented in these cases is not one of interference with the course of legislative proceedings in the enactment of rate laws, (as was the Prentis case) nor is it one of interference with the course of judicial proceedings in a court of the State, such as is prohibited by section 720 of the Revised Statutes, but it is a case of the right of a citizen to apply to a court of equity having full jurisdiction and power over the subject-matters of the suits and the parties thereto to temporarily restrain the enforcement of the orders of the Commission, which are a part of the body of the laws of the State, against the confiscation of their property, the ruin of their business, and certain ensuing bankruptcy, unless and until the law-making power of the State may be induced to change the orders and relieve complainants from such disaster. This right of complainants to hearing, determination and temporary orders of injunction now stands denied them.

459 To my mind, such a ruling, fraught with such consequences as must under the averments of the bills of complaint surely follow in these cases, should not be made in a court of conscience unless thereto conclusively impelled by controlling precedent and authority. That under its facts the Prentis case does not absolutely control the decision of the present cases I have endeavored to show. There can be no doubt, whatever, any Federal Court of the country, with the present understanding of the law, would have reached the same ultimate conclusion attained in the Prentis case, and for the all sufficient reason the order of the Virginia Commission in that case attempted to be restrained by complainants, in operation and enforcement against them, at no time during the pendency of the litigation had attained to the dignity of a law; hence there was no enforcement possible—nothing to restrain. To my mind, the test to apply in cases of this character, is this:

Has the order of the Commission, acting as a legislative body,

reached that point whereat it has become a part of the enforceable body of the law of the State, the disobedience of which entails heavy and drastic punishments or, the observance thereof works confiscation of property? That this is the true test which must be applied is made to appear by a consideration of a few of the adjudicated cases. Thus, in *Bacon v. Rutland R. R. Co.* 232 U. S. 134, cited in the majority opinion, Mr. Justice Holmes who wrote the opinion of the Court in the *Prentis* case, said:

"The Court was given legislative powers, and it was held that in the circumstances it was proper, before resorting to the Circuit Court of the United States, to make sure that the officials of the State would try to establish an unconstitutional rule. But it was laid down expressly that at the judicial stage the railroads had a right to resort to the courts of the United States at once."

In the well considered case of *Love v. Atchison, T. & S. F. Ry. Co.*, the Circuit Court of Appeals for this Circuit, 185 Fed. 327, Sanborn, C. J., delivering the opinion, said:

460 "The legislative function in rate-making looks to the future and determines what future rates shall be. But when rates, either tentative or final, have been put and are maintained in actual operation under penalty of severe fines, the question whether or not their effect is to take the property of the railroad companies affected thereby without just compensation is a judicial one, conditioned by past or present facts, and the national courts cannot be deprived of jurisdiction of it by the fact that the process of making the tentative rates is yet incomplete. It is as clear a violation of the Constitution, and one as promptly remediable in the national courts, to take the property of a railroad company without just compensation by the enforced operation of tentative rates during the process of their making as by the operation of final rates after that process is complete. Railroad companies that have been, are, or will be deprived of parts of their property devoted to the public use of transportation without just compensation during the continuance of the rate-making process by provisions of a state Constitution, or of a state law, or by orders of a state commission, prescribing tentative rates and putting them in effect during the rate-making process under sever penalties, may maintain suits for and obtain relief by injunction during the continuance of the rate-making process to the same extent that they may after the process is completed. These suits were not prematurely brought."

In all reason, I think it must be conceded the confiscation of the property of a citizen through the temporary enforcement of a rate which has reached the stage of an enforceable law or order is equally violative of the National Constitution with that of the confiscation of property by the enforcement of a permanent law. Hence, in its ultimate analysis and end, it must be held beyond the power of any State of this Union by the manner it ordains for the enactment of its

rate-making laws to place beyond the reach of the courts of equity of the country the power to impose a restraining hand between the oppression and tyranny of the operation of confiscatory laws during a prolonged course of the making of rate-law after such laws have reached the stage of completion whereat they become enforceable as laws, and by the citizen must be either obeyed, to his ruin, or disobeyed, at his peril. Ex parte Young, 209 U. S. 123; Wilcox v. Consolidated Gas Company, 212 U. S. 19; St. Louis Iron Mt. & Southern Ry Co. v. Williams, 251 U. S. 63.

For the foregoing reasons I cannot agree with but dissent from the majority opinion.

JOHN C. POLLOCK,  
*Judge.*

461 In the District Court of the United States for the Western  
District of Oklahoma.

Equity. No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY et al.

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.

*Order.*

The application of complainant for a temporary injunction having been fully presented and submitted upon the pleadings, evidence, arguments and briefs of counsel and the court being fully advised and a majority of the court (Judge Pollock dissenting) being of the opinion that the decision upon this application is governed and ruled by the decision in the case of Prentis v. Atlantic Coast Line, 211 U. S. 210—

It is ordered that said application be and the same is hereby denied.

To the making of this order and the denial of said application the complainant excepts and its exception is allowed.

KIMBROUGH STONE,  
*Circuit Judge.*

JOHN H. COTTERAL,  
*District Judge.*

Endorsed: Filed in District Court April 27, 1922. Arnold C. Dolde, Clerk.

462 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Free-ling, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Petition for Appeal.*

To the Honorable John H. Cottrel, District Judge:

The above named complainants, Oklahoma Gas and Electric Com-  
pany, a corporation, and Muskogee Gas and Electric Company, a  
corporation, feeling aggrieved by the decree rendered and entered  
in the above entitled cause on the 27th day of April, 1922, do hereby  
appeal from said decree to the Supreme Court of the United States,  
for the reasons set forth in the assignment of errors filed herewith,  
and they pray that their said appeal be allowed, and that citation be  
issued as provided by law, and that a transcript of the record, pro-  
ceedings and documents upon which said decree was based,  
463 duly authenticated, be sent to the Supreme Court of the  
United States, sitting in the City of Washington, in the Dis-  
trict of Columbia, under the rules in such cases made and provided;  
and that the court make the proper orders relating to the security  
to be required of these petitioners.

JOHN H. ROEMER,  
D. T. FLYNN,  
R. M. CAMPBELL,  
ROBERT M. RAINEY,  
STREETER B. FLYNN,  
*Attorneys for Complainants.*

Filed in District Court May 13, 1922.

ARNOLD C. DOLDE,  
*Clerk,*

By M. V. HAWS,  
*Deputy.*

464 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Order Allowing Appeal.*

On motion and petition of complainants it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein, be and the same is hereby allowed; that a certified transcript of the record, testimony, exhibits, orders, and all proceedings had herein, be forthwith transmitted to the Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of \$1,000.00.

Done at Guthrie, Oklahoma, this 13th day of May, 1922.

JOHN H. COTTERAL,  
*Judge of the District Court of the United  
States for the Western District of Okla-  
homa.*

465 Endorsed: Filed in District Court on May 13, 1922. Arnold C. Dolde, Clerk, by M. V. Hawa, Deputy.

466 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Assignments of Error.*

Now come the complainants in the above entitled cause, and files the following assignments of error, upon which they will rely in their appeal in said cause from the decree rendered by this Honorable Court on April 27, 1922, to-wit:

First. The District Court of the United States for the Western District of Oklahoma erred in denying complainants' application for a temporary injunction.

Second. The District Court of the United States for the Western District of Oklahoma erred in not granting to these complainants on motion heretofore filed and the affidavits filed in support thereof a temporary injunction as prayed in said motion.

467 Third. The District Court of the United States for the Western District of Oklahoma erred in holding that notwithstanding the order of the Corporation Commission of Oklahoma complained of herein had been put into effect and was a present enforceable law, and notwithstanding the Supreme Court of Oklahoma refused to grant a supersedeas suspending the operation of said order pending the appeal to said Supreme Court of Oklahoma, so that said order was and is enforceable and has been and is being enforced against these complainants, nevertheless the application for a temporary injunction was premature, and will be so until the Supreme Court of Oklahoma shall pass upon the appeal taken by these complainants to said court from the said order of said Corporation Commission.

Wherefore, these complainants pray that said decree be reversed, and that said District Court of the United States for the Western District of Oklahoma be ordered to enter a decree setting aside its said order or decree, and granting to these complainants the temporary injunction prayed for.

JOHN H. ROEMER,  
D. T. FLYNN,  
R. M. CAMPBELL,  
ROBERT M. RAINEY,  
STREETER B. FLYNN,  
*Attorneys for Complainants.*

Filed in District Court May 13, 1922.

ARNOLD C. DOLDE,  
*Clerk,*

By M. V. HAWS,  
*Deputy.*

468 In the District Court of the United States for the Western  
District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.,  
Defendants.

*Order Substituting Party Defendant.*

It being shown to the court that since the institution of this action S. P. Freeling has resigned as Attorney General of the State of Oklahoma, and George F. Short has been appointed and has qualified as such Attorney General in the place and stead of S. P. Freeling; and it being stipulated by and between the complainants and the above named George F. Short that the said George F. Short may be substituted as party defendant in the place and stead of S. P. Freeling;

It is therefore by the court ordered that George F. Short as Attorney General of Oklahoma be and he is hereby substituted as party defendant in the above entitled and numbered action in the place and stead of S. P. Freeling.

JOHN H. COTTERAL,  
*Judge.*

Endorsed: Filed in District Court on May 13, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

469 In the District Court of the United States for the Western  
District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,  
vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA et al.,  
Defendants.

*Bond on Appeal.*

Know all men by these presents:

That we, Oklahoma Gas and Electric Company, a corporation, and Muskogee Gas and Electric Company, a corporation, as principals, and Fidelity and Casualty Company of New York, a corporation, as surety, are held and firmly bound unto the State of Oklahoma in the sum of One Thousand (\$1,000.00) Dollars, for the payment of which well and truly to be made, we bind ourselves, our successors and assigns firmly by these presents.

The foregoing bond is conditioned, however,

That, whereas, the above named Oklahoma Gas and Electric Company and Muskogee Gas and Electric Company have prosecuted an appeal to the Supreme Court of the United States to reverse an order or decree of the District Court of the United States for the Western District of Oklahoma, made on the 27th day of April, 1922, denying an interlocutory injunction in the above entitled cause;

Now, Therefore, the condition of this obligation is such that if the above named Oklahoma Gas and Electric Company and  
470 the Muskogee Gas and Electric Company prosecute their said appeal to effect, and shall answer for all costs if they fail to make good their plea, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

Dated this 15th day of May, 1922.

OKLAHOMA GAS & ELECTRIC CO.,

By J. F. OWENS,

*Vice Pres. & General Manager;*

MUSKOGEE GAS & ELECTRIC CO.,

By W. R. EMERSON,

*Secy.,*

*Principals.*

THE FIDELITY & CASUALTY COMPANY OF  
NEW YORK,

*Surety,*

By HARRY C. UPSHER,

*Its Attorney in Fact.*

[SEAL.]

Approved May 16, 1922.

JOHN H. COTTERAL,  
District Judge.

Endorsed: Filed in District Court on May 16, 1922. Arnold C. Dolde, Clerk, by M. V. Haws, Deputy.

471 In the District Court of the United States for the Western District of Oklahoma.

In Equity.

No. 502.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,

VS.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, Campbell Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and S. P. Freeling, Attorney General for the State of Oklahoma, and the City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. P. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Præcipe for Transcript of Record on Appeal.*

To the Clerk of the above-entitled court:

You are hereby requested to prepare a transcript of the record in the above entitled cause to be filed in the United States Supreme Court, said record to be printed in accordance to the rules of the United States Supreme Court, and to include in the transcript of record the following.

First.

Citation and Service.

Second.

First Amended Bill and Exhibits.

Third.

Order to show cause.

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Fourth.

Order Permitting Supplemental Bill to be filed.

Fifth.

Supplemental Bill and Exhibits.

Sixth.

Order to Show Cause.

Seventh.

Order Permitting Second Supplemental Bill to be filed.

Eighth.

Second Supplemental Bill and Exhibits.

Ninth.

Order to Show Cause.

Tenth.

Order Permitting Third Supplemental Bill to be filed.

Eleventh.

Third Supplemental Bill and Exhibits.

Twelfth.

Order to Show Cause.

Thirteenth.

Answer of Defendants.

Fourteenth.

Separate Answer of Defendants City of Oklahoma City and Charles H. Ruth, City Attorney.

Fifteenth.

Order Fixing Date for Hearing.

Sixteenth.

Affidavit of Edward N. Strait, dated February 8, 1922.

472½ Affidavit of Edward N. Strait, dated February 8, 1922.

Affidavit of Edward N. Strait, dated February 8, 1922.

Affidavit of Edward N. Strait, dated February 8, 1922.

Affidavit of Edward N. Strait, dated February 8, 1922.

Affidavit of Arthur S. Huey, dated February 8, 1922.

Affidavit of Wm. H. Crutcher, dated February 10, 1922.

Affidavit of Edward D. Uhlendorf, dated February 24, 1922.  
Affidavit of Arthur H. Kuhn, dated January 26, 1922.  
Affidavit of W. R. Emerson, dated February 3, 1922.  
Affidavit of Edward N. Strait, dated February 30, 1922.  
Affidavit of Wm. H. Crutcher, dated February 24, 1922.  
Affidavit of W. R. Emerson, dated February 23, 1922.  
Affidavit of A. B. Coryell, dated February 25, 1922.  
Affidavit of W. R. Emerson, dated December 31, 1921.  
Affidavit of Edward F. McKay, dated February 24, 1922.  
Affidavit of Edward F. McKay, dated February 24, 1922.  
Affidavit of Edward F. McKay, dated February 24, 1922.  
Affidavit of Edward F. McKay, dated February 24, 1922.  
Affidavit of E. F. McKay, dated February 24, 1922.  
Affidavit of J. W. Duval, dated February 25, 1922.  
Affidavit of Guy B. Treat, dated February 25, 1922.

Seventeenth.

Testimony of H. E. Musson, W. J. Pettee, W. R. Emerson, Claude Connally, Minta De Ford, A. F. Binns, E. P. Stockwell and W. D. Crutcher, taken before the Corporation Commission of Oklahoma, as filed in said cause by the defendants.

Eighteenth.

Opinions of each of the three judges denying the temporary injunction.

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Nineteenth.

Order Denying the Injunction.

Twentieth.

Petition for Appeal.

Twenty-first.

Order Allowing Appeal.

Twenty-second.

Assignments of Error.

Twenty-third.

Bond on Appeal.

Twenty-fourth.

Order Substituting Party Defendant.

Twenty-fifth.

Præcipe for Transcript of Record on Appeal.

JOHN H. ROEMER,  
D. T. FLYNN,  
R. M. CAMPBELL,  
ROBERT M. RAINEY,  
STREETER B. FLYNN,  
*Attorneys for Complainants.*

474 In the District Court of the United States for the Western  
District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. F. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Præcipe.*

Service of a copy of the præcipe for transcript of record on appeal, in the above styled and numbered cause, is hereby acknowledged this 16th day of May, 1922.

CORPORATION COM. STATE OF  
OKLA.,  
By E. S. RATLIFF,  
*Counsel.*

475 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,  
vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. F. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Præcipe.*

Service of a copy of the præcipe for transcript of record on appeal, in the above styled and numbered cause, is hereby acknowledged this 16 day of May, 1922.

GEO. F. SHORT,  
*Attorney General.*  
E. L. FULTON,  
*Asst. Attorney General.*

476 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,  
vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. F. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Præcipe.*

Service of a copy of the præcipe for transcript of record on appeal, in the above styled and numbered cause, is hereby acknowledged this 19 day of May, 1922.

C. H. RUTH,  
*Atty. for Okla. City.*

477 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. F. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Præcipe.*

Service of a copy of the præcipe for transcript of record on appeal, in the above styled and numbered cause, is hereby acknowledged this 16 day of May, 1922.

W. P. MCGINNIS.

478 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,

vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. F. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Præcipe.*

Service of a copy of the præcipe for transcript of record on appeal, in the above styled and numbered cause, is hereby acknowledged this 16th day of May, 1922.

GEO. H. WALKER,  
Mayor.

479 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,  
vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. F. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Præcipe.*

Service of a copy of the præcipe for transcript of record on appeal, in the above styled and numbered cause, is hereby acknowledged this 18 day of May, 1922.

F. W. HERNDON.

480 In the District Court of the United States for the Western District of Oklahoma.

No. 502. Eq.

OKLAHOMA GAS AND ELECTRIC COMPANY, a Corporation, and MUSKOGEE GAS AND ELECTRIC COMPANY, a Corporation, Complainants,  
vs.

CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, CAMPBELL Russell, Art L. Walker, and E. R. Hughes, Constituting the Corporation Commission of the State of Oklahoma, and George F. Short, Attorney General for the State of Oklahoma, and The City of Oklahoma City and Its Attorney, C. H. Ruth, and The City of Muskogee and Its Attorney, W. F. McGinnis, and The City of Enid and Its Attorney, F. W. Herndon, and The City of El Reno and Its Attorney, M. B. Cope, Defendants.

*Service of Præcipe.*

Service of a copy of the præcipe for transcript of record on appeal, in the above styled and numbered cause, is hereby acknowledged this 16 day of May, 1922.

M. B. COPE,  
Former City Atty.  
J. N. ROBERSON,  
City Attorney.

Endorsed: Filed in District Court on May 20, 1922. Arnold C. Dolde, Clerk, by F. G. Offutt, Deputy.

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*(Clerk's Certificate to Transcript.)*

UNITED STATES OF AMERICA,  
*Western District of Oklahoma, ss:*

I, Arnold C. Dolde, Clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in said court in case No. 502, in Equity, wherein Oklahoma Gas and Electric Company, a corporation, and Muskogee Gas and Electric Company, a corporation, are plaintiffs, and the Corporation Commission of the State of Oklahoma, and others, are defendants, as full, true and complete as the said transcript purports to contain and as called for by the præcipe for transcript of the record above set forth.

I further certify that the original citation is hereto attached and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of Guthrie, in said District, this 31st day of May, A. D. 1922.

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,

*Clerk,*

By THEODORE M. FILSON,

*Deputy Clerk.*

Endorsed on cover: File No. 28,969. W. Oklahoma D. C. U. S. Term No. 419. Oklahoma Gas & Electric Company and Muskogee Gas & Electric Company, appellants, vs. Corporation Commission of the State of Oklahoma, Campbell Russell, Art L. Walker, and E. R. Hughes, &c., et al. Filed June 6th, 1922. File No. 28,969.

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No. 419.

IN THE

# Supreme Court of the United States

(File Number 28969.)

OCTOBER TERM, 1922.

OKLAHOMA GAS & ELECTRIC COMPANY, AND  
MUSKOGEE GAS & ELECTRIC COMPANY,  
APPELLANTS,

VS.

CORPORATION COMMISSION OF THE STATE  
OF OKLAHOMA, CAMPBELL RUSSELL, ART  
L. WALKER AND E. R. HUGHES, ETC. ET  
AL, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

BRIEF AND PRINTED ARGUMENT FOR  
APPELLANTS.

DENNIS T. FLYNN,  
JOHN H. ROEMER,  
ROBERT M. RAINEY,  
STREETER B. FLYNN.

Office Supreme Court, U. S.

FILED

DEC 12 1922

WM. H. STANSBURY  
CLERK



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1870  
The first of the year was a very dry one  
and the crops were much injured by the  
drought. The wheat was particularly  
suffered and the yield was very small.  
The corn was also much injured and  
the yield was very small. The  
cattle and sheep were also much  
suffered and the yield was very small.  
The sheep were particularly  
suffered and the yield was very small.  
The cattle were also much  
suffered and the yield was very small.

The second of the year was a very wet one  
and the crops were much injured by the  
flood. The wheat was particularly  
suffered and the yield was very small.  
The corn was also much injured and  
the yield was very small. The  
cattle and sheep were also much  
suffered and the yield was very small.  
The sheep were particularly  
suffered and the yield was very small.  
The cattle were also much  
suffered and the yield was very small.

**No. 419.**

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**IN THE**  
**Supreme Court of the United States**

---

(File Number 28969.)

---

OCTOBER TERM, 1922.

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OKLAHOMA GAS & ELECTRIC COMPANY, AND  
MUSKOGEE GAS & ELECTRIC COMPANY,  
APPELLANTS,

VS.

CORPORATION COMMISSION OF THE STATE  
OF OKLAHOMA, CAMPBELL RUSSELL, ART  
L. WALKER AND E. R. HUGHES, ETC. ET  
AL., APPELLEES.

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED  
STATES FOR THE WESTERN DISTRICT OF OKLAHOMA.

---

**STATEMENT OF THE CASE.**

The Oklahoma Gas & Electric Company and the Muskogee Gas & Electric Company, appellants, are corporations organized under the laws of Oklahoma. The Oklahoma Gas & Electric Company is now, and has been

for a number of years, engaged in the business of distributing natural gas in the Cities of Oklahoma City, Enid and El Reno, and in the Towns of Britton, Bethany and Yukon, in said state, under franchises granted to it by said cities and towns; and the Muskogee Gas & Electric Company is now, and has been for a number of years, engaged in the business of distributing natural gas in the City of Muskogee, Oklahoma, under a franchise granted to it by said city. Appellants are public utilities and under the constitution and laws of Oklahoma, the Corporation Commission of said state has general supervision over them, with power to fix and establish rates to be charged their consumers for gas, and to prescribe rules, requirements and regulations affecting their service.

Prior to the 25th day of June, 1921, appellants purchased their gas which they distributed in the cities and towns above named, from the Oklahoma Natural Gas Company, under what are commonly denominated and known as percentage or divisional contracts, which in substance provided that the appellant, the Oklahoma Gas & Electric Company, should pay to the Oklahoma Natural Gas Company in the Cities of Oklahoma City, Enid and El Reno, and in the Towns of Britton, Bethany and Yukon, two-thirds of the collections from the sale of natural gas to domestic consumers and three-fourths of the collections from the sale of natural gas to industrial and manufacturing consumers. The percentage provided for under the contract between the Muskogee Gas & Electric Company and the Oklahoma Natural Gas Company was

two-thirds of the collections from the sale of natural gas to all classes of consumers (Pr. Tr. 8).

On August 10th, 1920, the Oklahoma Natural Gas Company filed its petition with the Corporation Commission praying for a valuation of its properties, and the establishment of a gate or city border rate for gas sold by said company to appellants for distribution by the latter to their consumers in the towns and cities supplied by them. After the institution of this proceeding and before any final order was entered therein, appellants filed their applications in the Supreme Court of Oklahoma for writs of prohibition against the Corporation Commission seeking to prevent the abrogation of said percentage of divisional contracts. In that case the Supreme Court of Oklahoma held in effect that if it were for the best interest of the public and the facts justified it, the Corporation Commission would be authorized in abrogating said contracts. This case is styled *Oklahoma Gas & Electric Company vs. Corporation Commission*, and is reported in .... Okla. ...., 201 Pac. 505 (Pr. Tr. 9).

Thereafter and on, to wit, the 25th day of June, 1921, the Commission entered its order No. 1995, in cause No. 4023, abrogating said contracts and fixing a city border or gate rate of twenty-five cents per thousand cubic feet net measured at the boundary of each town or city for all gas purchased by appellants from the Oklahoma Natural Gas Company, and by them in turn sold to consumers consuming less than five hundred thousand cubic feet each, and twenty cents per thousand cubic feet net for gas purchased by appellants and sold to consum-

ers consuming more than five hundred thousand cubic feet each. In defense of their said contracts appellants applied to the United States District Court for the Western District of Oklahoma for an injunction enjoining the Corporation Commission from enforcing its said order No. 1995, which application was denied and an appeal taken by these appellants to this court, but which said appeal was later abandoned (Pr. Tr. 9).

On November 26, 1920, appellants filed an application in cause No. 4142 with the Corporation Commission, asking said Commission to fix a valuation of all of their properties in the cities and towns above named, pursuant to which various hearings were had before that body, extending over a number of months in the years 1920 and 1921, and although a large volume of exhibits and testimony was introduced as a basis for arriving at such valuation no order was ever entered in said cause (Pr. Tr. 11).

From the 1st day of September, 1919, up to and including the 30th day of April, 1920, the rates for natural gas consumed in the cities and towns hereinbefore referred to as prescribed by the Corporation Commission, and the revenue from which was to be divided according to the percentage contracts were as follows:

For the first 100 M. cubic feet, 40c net per M. cu. ft.

For the next 400 M. cubic feet, 32c net per M. cu. ft.

For all excess 500 M. cubic feet, 25c net per M. cu. ft.

From the 1st day of May up to and including the 31st day of March, 1921, the rates in the Cities of Oklahoma City, El Reno and Muskogee, and the Towns of Britton, Bethany and Yukon were as follows:

For the first 100 M. cubic feet, 48c net per M. cu. ft.

For the next 400 M. cubic feet, 40c net per M. cu. ft.

For all excess of 500 M. cubic feet, 33c per M. cu. ft.

The rates for natural gas in the City of Enid remained the same as they were from September 1, 1919, to April, 1920. On April 1, 1921, the rates for natural gas reverted to those in effect from September 1, 1919, to April 30, 1920.

In cause No. 4023 wherein the order was entered by the Commission abrogating the percentage contracts and fixing the gate rates, appellants requested the Corporation Commission to fix a fair and compensatory rate for gas sold to consumers in the cities and towns above named but this was not done. Within two or three days after the issuance of the order abrogating the contracts and fixing the gate rate appellants applied to the Corporation Commission for an increase in gas rates in all the towns and cities served by them sufficient to give them a fair and reasonable return upon the value of their properties used and useful in distributing natural gas in each of the cities and towns in which they were selling gas as public utilities. The rates so requested were 60c in the City of Oklahoma City, and the Towns of Britton, Bethany and

Yukon; 88c in the City of El Reno, 65c in the City of Enid, and 80c in the City of Muskogee. In these applications the Commission was requested to fix the value of appellants' property used and useful in distributing natural gas in the said cities and towns and that reasonable rates be allowed thereon. Without a hearing upon these applications and without findings as to the value of the distributing plants of these appellants, the Corporation Commission on the 25th day of June, 1921, gave a slight increase in rates, which was so slight as to be in effect a denial of appellants' application. The schedule made effective as of July 1, 1921 by the order, is as follows: Oklahoma City, and the Towns of Bethany, Britton and Yukon, forty-two cents net per M. cubic feet for the first 500 M. cubic feet, and twenty-five cents per M. cubic feet for all excess cubic feet; in the Cities of El Reno, Enid and Muskogee, forty-five cents for the first 500 M. cubic feet, and twenty-five cents per M. cubic feet for all excess cubic feet.

After giving the rates made effective by the order of the Corporation Commission of July 1, 1921, a fair trial for nearly six months these appellants appealed from the action of the Corporation Commission to the Supreme Court of the State of Oklahoma, and after said appeals were filed in said court, appellants on the 17th day of December, 1921, applied to the Supreme Court of said state for a supersedeas in said causes and in said applications prayed that these appellants be allowed, pending said appeals, to charge an increased schedule of rates sufficient to give them adequate returns upon the value of

their properties used and useful in the distribution of gas in the cities and towns served by them. On the same day the Supreme Court of Oklahoma entered its orders finding that conditions had materially changed, and that the interest of justice required that said causes be remanded to the Commission to be further investigated and reported upon to the Supreme Court, and directed that the Commission complete its investigation and report its findings and conclusions in each of said causes to the Supreme Court within fifteen days from that date. The court further ordered that pending said investigation and report appellants' applications for supersedeas be continued (Pr. Tr. 24).

Pursuant to the orders of the Supreme Court the Corporation Commission set said causes for hearing on the 30th day of December, 1921, and said hearings were commenced on that date and completed on the following day, at which time the Commission took the causes under consideration and stated that it would file its orders within a few days thereafter (Pr. Tr. 24).

On January 21, 1922, the Commission filed its findings of fact, opinion and order, fixing the gas rates in Oklahoma City and the Towns of Britton, Bethany, Putnam City and Yukon (Pr. Tr. 150).

Upon the application of the Commission it was given extensions of time in which to make its findings and reports as to the other cities affected (Pr. Tr. 24).

On January 27, 1922, it filed its findings of fact, opinion and order fixing the gas rates in the Cities of Enid and El Reno (Pr. Tr. 174).

On the 17th day of February, 1922, it filed its findings of fact, opinion and order fixing the gas rate in Muskogee, Oklahoma (Pr. Tr. 170).

Subsequent to the making and entering of the last mentioned orders these appellants again applied to the Supreme Court of the State of Oklahoma to have the said orders superseded and to permit them to charge fair and compensatory rates pending the determination of said appeals in the Supreme Court of the State of Oklahoma, and each of said applications was by the said Supreme Court denied (Pr. Tr. 72, 125 and 126).

Prior to the hearings before the Corporation Commission on December 30th and 31st, 1921, to-wit, the 17th day of December, 1921, appellants filed this bill in equity in the District Court of the United States for the Western District of Oklahoma, against the Corporation Commission and its members, the Attorney General of the State, and certain cities and their city attorneys, seeking a temporary injunction against the enforcement of the prescribed rates pending the determination of their legislative appeal in the State Supreme Court on the ground that the rates prescribed by the Commission effective July 1, 1921, were so unreasonably low as to the non-compensatory, unremunerative and confiscatory, thereby depriving appellants of due process of law in contravention to the Fourteenth Amendment to the Constitution of the United States (Pr. Tr. 6).

After the Commission had entered its orders fixing the rates for gas in the cities and towns furnished by appellants, pursuant to the hearings had on December 30th

and 31st, 1921, as directed by the aforementioned orders of the Supreme Court of the state, and after the Supreme Court of the state had denied appellants' applications to supersede these orders, they filed their second and third supplemental bills of complaint, setting forth the material matters that had transpired since the filing of their bill (Pr. Tr. 73 and 128).

On April 27th, 1921, the judges, Judge Pollock dissenting, denied the temporary injunction, and from that order this appeal has been taken (Pr. Tr. 356, 360, 362).

### **Valuations and Rates as Shown by the Commissions Orders.**

#### **A. Oklahoma City.**

The Corporation Commission in Cause No. 4302 in its Order No. 1995 made on the 18th day of January, 1922, found that the value of the Oklahoma Gas & Electric Company's property in the Oklahoma City Division, comprising the City of Oklahoma City and the towns of Bethany, Britton and Yukon, based on original or historical cost was \$1,846,845.00 as of August 1, 1921 (Pr. Tr. 110), and that the new construction cost between August 1, 1921, and October 31, 1921, reported by the company was \$30,850.00, making an original cost as of the date of the hearing of \$1,877,695.00 (Pr. Tr. 111).

It further found according to the testimony of its own engineer, using quantities as of April 1, 1920, and prices as of August 1, 1921, a replacement cost of \$2,693,492.00 (Pr. Tr. 105); that the additions and betterments placed on the property between April 1, 1920, and

August 1, 1921, amounted to \$111,597.00 (Pr. Tr. 105), making a total replacement cost of \$2,805,089.00, as of that date. It found that \$46,802.00 (Pr. Tr. 105) should be deducted for omissions and contingencies, and it then arbitrarily deducted twenty (20) per cent from the figures submitted by its engineer, which covered such items as taxes, engineering, superintendence, legal expense and injuries during construction, etc. After making this arbitrary deduction it found the replacement value of the physical plant as of August 1, 1921, to be \$2,299,161.00 (Pr. Tr. 105) to which it added the \$30,850.00, additions and betterments between August 1, 1921, and the date of the hearing (Pr. Tr. 105).

In its order it also found that in the above increase was included \$46,570.00 of property not used and useful in serving the public which amount it deducted, leaving a replacement value, as of August 1, 1921, based upon the then prevailing prices of materials, of \$2,273,341.00 (Pr. Tr. 105). It also arbitrarily deducted \$79,566.00 from the value of appellants' property in the Oklahoma City division, which was invested in extensions, and left according to its theory a replacement value of \$2,193,795.00 as of November 1, 1921, based upon material prices as of August 1st, 1921 (Pr. Tr. 106). These figures did not include going concern value or any other intangible factors.

The order then recites that there was a marked decline in the market prices of several major factors of the plant between August 1 and December 1, 1921, and deducted the following items:

Mains and distributing lines	\$316,221.00
Labor	47,920.00
Meters and regulators	8,968.00

or a total of 373,109.00

leaving \$1,820,666 to which the Commission added 20% to cover all intangibles and arrived at a replacement cost new of the gas property in the Oklahoma City division of \$2,184,799.00. This was depreciated for condition percentage to \$1,704,143.00 (Pr. Tr. 109).

Arithmetical errors made by the Commission when corrected would make this figure \$1,719,377.00.

The order further recited that the company's average investment in the Oklahoma City division during the seven years from 1915 to 1921 inclusive was \$1,375,-330.61; that it had earned upon such valuation \$461,-477.31 and had collected \$481,365.72 for depreciation during the seven year period. This latter sum it deducted from the value of appellants' property leaving the sum of \$1,230,660.00 (Pr. Tr. 111-112). Further in the order this statement occurs "All calculations appearing hereinafter involving a rate base are based upon this value of \$1,206,625.00" (Pr. Tr. 113). Upon this valuation the Commission fixed a rate to be charged consumers of 45c per thousand cubic feet for gas used for domestic purposes and 25c per thousand cubic feet for gas used for industrial purposes and provided that the first 500,000 cubic feet of gas for industrial purposes should pay the domestic rate (Pr. Tr. 120).

At the time this order was entered appellant was

paying the Oklahoma Natural Gas Company a city or gate rate of 35c per thousand cubic feet which it was allowed to charge under a temporary restraining order that it had obtained from the United States District Court for the Western District of Oklahoma and the Corporation Commission ordered that as long as a city or gate rate of 35c was imposed upon the Oklahoma Gas & Electric Company by authority of said court or other Federal Court, "thirteen cents per thousand cubic feet may be collected from domestic patrons of said company in addition to the domestic rate herein prescribed subject to refund as per previous order and bond" (Pr. Tr. 120). This temporary restraining order was dissolved by the Federal Court on the 27th day of April, 1922, the same day that appellants were denied a temporary injunction herein (Pr. Tr. 366).

(B) Enid and El Reno.

By similar processes the Commission found a rate base for the City of Enid of \$426,944.55 and for the City of El Reno of \$230,680.08 (Pr. Tr. 122), and it fixed a rate in the Enid division of the Oklahoma Gas & Electric Company of 50c per thousand cubic feet for gas used for domestic purposes and 55c in the City of El Reno, and of 25c per thousand cubic feet in each of said cities for industrial purposes with the provision that the first 500,000 cubic feet for industrial purposes should be paid for at the domestic rate (Pr. Tr. 124).

## (C) Muskogee.

The Commission in its order valued the Muskogee Gas & Electric Company's property at \$835,685.51, and adopted that value as the rate base applicable in fixing the rate, which it fixed at 50c per thousand cubic feet for gas used for domestic purposes and 25c per thousand cubic feet for gas used for industrial purposes with the proviso that the first 500,000 feet used for industrial purposes should pay the domestic rate (Pr. Tr. 131).

In calculating the rate to be charged, the Commission estimated the sales in each of said towns and cities for 1922 to be the same as they were in 1921. It found that the unaccounted for gas in the Oklahoma City distributing system was 20.5 per cent of the gas purchased from the Oklahoma Natural Gas Company at the city gate; and in the Muskogee distributing system was 14 per cent. However, in calculating the amount of gas purchased it estimated leakage at only ten (10) per cent for each distributing system. In arriving at operating expenses the Commission eliminated the charges paid by the Oklahoma Gas & Electric Company and Muskogee Gas & Electric Company to the Byllesby Engineering and Management Corporation as a management fee.

In the trial of this case in the Federal Court for the Western District of Oklahoma the order of the Commission was introduced in evidence disclosing the foregoing findings (Pr. Tr. 100-125).

**Appellants' Evidence of Valuations and Rates  
Necessary to Yield Fair Returns.**

The following pertinent facts were proved by appellants at that hearing:

The valuations of the appellants' gas properties as of December 31, 1921, predicated upon prevailing material and labor prices as of December, 1921, are as follows (Pr. Tr. 276-279):

Division	Reproduction cost new	Present value	Reproduction cost (5 yr. avg.)	Rep. cost less depreciation (5 yr. avg.)
Oklahoma City	\$2,592,743	1,942,828	3,242,657	2,417,266
Muskogee	1,106,783	866,051	1,389,381	1,083,652
Enid	627,986	457,770	786,289	570,229
El Reno	334,548	256,828	421,983	323,279

The above values do not include going value, working capital, cost of money or any items whatsoever of an intangible nature. Including these items the valuation of said properties is as follows: Oklahoma City Division, which includes Oklahoma City, Bethany, Putnam City, Britton and Yukon not less than \$2,660,583; Muskogee division, \$1,191,723; Enid division \$626,766; El Reno division \$354,146 (Pr. Tr. 276).

The total amount of gas sold in the Oklahoma City division during the year ending September 30, 1921, was 3,349,678,000 cubic feet, which was divided between the two rate classifications approximately as follows (Pr. Tr. 217):

Classification	Amount of gas sold.
First 500,000 cu. ft. per month	2,356,045,000 cu. ft.
Excess cu. ft. per month	993,633,000 cu. ft.
Total	<u>3,349,678,000 cu. ft.</u>

## Gross Revenues.

The gross revenues derivable from the same volume of sales under the present rates are as follows:

2,356,045 M cu. ft. at 45c per M	\$1,060,220
993,633 M cu. ft. at 25c per M	248,408
Total Gross Gas Revenues	<u>\$1,308,628</u>

## Operating Expenses.

The amount of gas lost and unaccounted for in the Oklahoma City division is approximately twenty (20) per cent. The amount of gas required at the city gate to furnish to customers the amount of gas sold during the year ending September 30, 1921, is therefore 4,187,098,000 cubic feet (Pr. Tr. 217). Under the gate rate order, all of this, except that portion which is delivered to customers in excess of 500,000 cubic feet per month, is paid for by the Oklahoma Gas & Electric Company at the rate of 25c per M cubic feet. The amount delivered to customers in excess of 500,000 cubic feet per month is paid for at the rate of 20c per M cubic feet (Pr. Tr. 217).

The cost of gas to the Oklahoma Gas and Electric Company for a like volume under the present gate rates would be as follows:

3,193,465 M cu. ft. at 25c per M	\$798,366
993,633 M cu. ft. at 20c per M	198,727
4,187,098	<u>\$997,093</u>
(Pr. Tr. 217). Total	

Other operating expenses for the year ending September 30, 1921, exclusive of depreciation, amortization and returns, amounted to \$235,971.00.

Total operating expenses would under present gate rates therefore, be \$1,233,064.00.

(Pr. Tr. 217).

(A) Amount available for Depreciation, Amortization and Returns.

There would be available for depreciation, amortization and returns, under present rates, \$75,564.00.

Calculations based on gate rate of 35c and 20c. Following the same method of calculation, but using a rate of 58c instead of 45c per 1,000 cubic feet sold for the first 500,000 cubic feet per month, and a gate rate of 35c instead of 25c per 1,000 cubic feet for all gas received by the company, except that portion which equals the amount sold to customers in excess of 500,000 cubic feet per month, the results are as follows:

Gross Revenues.	
2,356,045 M cu. ft. at 58c per M	\$1,366,506
993,633 M cu. ft. at 58c per M	248,408
Total	<hr/> \$1,614,914
Operating Expenses.	
Cost of Gas.	
3,193,465 M cu. ft. at 35c per M	\$1,117,713
993,633 M cu. ft. at 25c per M	248,408
Total cost of gas	<hr/> \$1,316,440
Other Operating Expenses	235,971
Total Operating Expenses	<hr/> \$1,552,411
(Pr. Tr. 219).	

Amount available for depreciation, amortization and returns \$62,503.00 (Pr. Tr. 92).

By similar calculations for the years ending October 31st and November 30th, 1921, using the amount of gas in the different classifications actually sold during that period and allowing twenty (20) per cent for unaccounted for gas, the net revenue available for depreciation, amortization and return under the schedule of rates now in force would amount to \$85,155.95 and \$82,861.00 for those years respectively (Pr. Tr. 190). Using the same amount of gas but figuring the return based upon the 35c gas rate allowed the Oklahoma Natural under the restraining order issued by the United States District Court and the 58c rate granted by the Corporation Commission, so long as said order of the Federal Court remained in effect, the amount available for amortization, depreciation and returns for the years ending October 31st and November 30th, 1921, would be \$77,735.28 (Pr. Tr. 189) and \$74,536.06 (Pr. Tr. 191) respectively. Allowing 20% for leakage and taking the actual amount of gas under the different classifications sold in the Muskogee, Enid and El Reno divisions, and using the gas rate of 25c and 20c now actually in force, and the domestic rates as fixed by the orders of the Commission, the amount available in the different divisions for depreciation, amortization and return are as follows:

Year Ending	Sept. 30, 1921	Octo. 31, 1921
-------------	----------------	----------------

Nov. 30, 1921

Muskogee			
Division	\$36,517.75	\$38,305.00	\$37,433.00
Enid Division	28,748.00	29,065.00	27,120.00
	(Pr. T. 195)	(Pr. T. 197)	(Pr. T. 199)
El Reno Division	10,261.00	8,967.00	8,245.00
	(Pr. T. 201)	(Pr. T. 203)	(Pr. T. 205)

Calculations based on Gate Rate of 35c and 20c.

Muskogee			
Division	31,909.73	34,808.64	33,416.63
Enid Division	26,291.00	28,500.00	26,786.00
	(Pr. T. 196)	(Pr. T. 198)	(Pr. T. 200)
El Reno Division	9,621.00	8,657.00	7,921.00
	(Pr. T. 202)	(Pr. T. 204)	(Pr. T. 206)

(B) Net Earnings Necessary to Yield Fair Returns.

The net earnings required to yield 15 and 13 per cent, respectively, for depreciation, amortization and interest on the fair valuation of the property, set forth above, is as follows:

	15%	13%
Oklahoma City, Bethany and Britton and Yukon	\$399,087	\$345,875
Muskogee	178,758	154,923
Enid	94,015	81,479
El Reno	53,122	46,038
(Pr. Tr. 215.)		

(C) Rates to Public Required to Yield Fair Return.

Calculating the cost of gas received at the city gates of the cities and towns above named from the Oklahoma Natural Gas Company under a gate rate of 25c per thousand cubic feet for all gas received at the gate, except that portion which is sold to customers in excess of 500,000

cubic feet per month for which amount the gate rate is 20c per thousand cubic feet, and calculating the same on a basis of 35c and 20c, respectively, per thousand cubic feet at the city gate, and including the other actual operating expenses, and assuming as did the Commission that the volume of gas sales remains the same as for the year ending September 30, 1921, the following rates are necessary to yield fair returns:

	Under gate rate of	
	25c and 20c	35c and 20c
Oklahoma City Division	58.7c	72.2c
Muskogee Division	66.5	79.2
Enid Division	63.5	77.2
El Reno Division	77.2	90.4

(Pr. Tr. 216.)

**The district court for the Western District of Oklahoma was in error in declining to issue the temporary injunction prayed for by appellants, on the ground that the bill was prematurely brought.**

As appears from the allegations of plaintiff's supplemental bill (Pr. Tr. 23) and the facts heretofore stated, which will be hereinafter more fully discussed, the Corporation Commission's orders confiscate appellants' properties and infringe the 14th Amendment to the Constitution of the United States. So, here, as was stated by this court in *Prentis v. Atlantic Coast Line*, 211 U. S. 210, 29 Sup. Ct. 67, 53 L. Ed. 150:

\* \* \* "the main question to be discussed, is whether the order is one which, in spite of its constitutional invalidity, the courts of the United States are not at liberty to impugn."

It will be borne in mind that the orders of the Corporation Commission complained of in the bill fixed rates for appellants to charge consumers of gas in the cities and towns affected. These rates did not give appellants a fair and adequate return upon the value of their properties used and useful in serving the public and are therefore confiscatory. These orders were put into force and effect immediately after their issuance (Pr. Tr. 25) and although the appeals from the orders are now pending in the Supreme Court of the State, since that court denied appellants' applications for supersedeas shortly after the orders were made, these confiscatory rates are now being enforced against them which they dare not violate because of the severe penalties they would incur for such violation.

Section 20, Article 9 of the Oklahoma Constitution, regulating appeals from the Corporation Commission, is as follows:

"From any action of the Commission prescribing rates, charges or classification of traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences, or public service of any transportation or transmission company, or refusing to approve a suspending bond, or requiring additional security thereon or an increase thereof, as hereinafter provided for, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to cost, as may be prescribed by law) may be taken by the corporation whose rates, charges, or classifications of traffic, schedule, facilities, conveniences, or service are affected, or by any person deeming himself aggrieved by such action, or (if allowed by law) by the state. Until other-

wise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court from the District Courts, except that such an appeal shall be of right, and the Supreme Court may provide by rule for proceedings in the matter of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges, or classifications of traffic, schedules, facilities, conveniences, or service are affected, the state shall be made the appellee. The Legislature may also, by general laws, provide for appeals from any other action of the Commission, by the state, or by any person interested, irrespective of the amount involved. All appeals from the Commission shall be to the Supreme Court only, and in all appeals to which the state is a party, it shall be represented by the Attorney General or his legally appointed representative. No court of this state (except the Supreme Court, by way of appeals as herein authorized) shall have jurisdiction to review, reverse, correct, or annul any action of the Commission within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the Commission in the performance of its official duties: Provided, however, that the writs of mandamus and prohibition shall lie from the Supreme Court to the Commission in all cases where such writs, respectively, would lie to any inferior court or officer."

Section 21, Article 9 of the Constitution provides that:

"Upon the granting of an appeal, a writ supersedeas may be awarded by the Supreme Court suspending the operation of the action appealed from, until the final disposition of the appeal.

\* \* \*

By an Act of the Oklahoma Legislature, chapter 93 Session Laws 1913, the Corporation Commission was given jurisdiction over utilities engaged in the distribution and sale of gas, and by Section Five of this act, provision was made for appeals in the manner prescribed by the above quoted provision of the Oklahoma Constitution.

Where an existing rate is reduced by the Corporation Commission, under the above provision, the utility may apply to the Supreme Court for a supersedeas, which, if granted, keeps the rate in force and effect pending the determination of the appeal in the Supreme Court of the state, and in such circumstances there could be no question but that principles of comity would impel the Federal Courts to refrain from interfering before the determination of the case on appeal for the reason that the order is suspended in that interim, and the alleged confiscatory rates would not be enforced against the appellants. In cases where a utility applies to the Corporation Commission for an increased rate and the increase is denied, as in the instant case, it is extremely doubtful whether the Supreme Court of Oklahoma is authorized, under the above constitutional provisions upon application for a supersedeas to put in force and effect the increased rates requested and necessary to give returns sufficient to avoid confiscation, but, be that as it may, the applications for supersedeas and for leave to put the increased rates requested in force and effect pending the appeals were denied appellants in these cases by the Supreme Court of the state. In these circumstances,

the utility is subject to a confiscatory rate pending the appeal, and has no way to reimburse itself and avoid confiscation unless the Federal Courts assume jurisdiction and enjoin the enforcement of the confiscatory orders.

In denying the temporary injunction the Honorable Kimbrough Stone, Circuit Judge, and the Honorable John H. Cotteral, District Judge, in their opinions (Pr. Tr. 356 and 361, inclusive), based their action on the ground that the instant case was controlled by the decision of this court in *Prentis v. Atlantic Coast Line*, *supra*, and the Honorable John C. Pollock, District Judge, dissented on the ground that the instant case was not controlled by that decision. All of the judges recognized the similarity of the Virginia constitutional provisions to those of Oklahoma, as was admitted by the parties. In our opinion, however, Judge Pollock correctly analyzed the *Prentis* case, as appears from the following language of his opinion:

"At the threshold of these cases we are confronted by the contention on the part of defendants therein these suits are prematurely brought for that at the time the orders of temporary injunction were applied for, and now, the legislative power by the state ordained for the fixing and establishing of the rates for service sought to be enjoined had not been fully completed and ended, and the case of *Prentis v. Atlantic Coast Line*, 211 U. S. 210, is cited and relied upon as conclusive of this contention, and such is the view adopted by a majority of this court. That case arose in the State of Virginia. The provisions of the Constitution of Virginia under which the controversy arose are conceded to be identical or like those of the State of Oklahoma involved in this

controversy which confers legislative as well as judicial powers upon the Supreme Court of the state in ratemaking cases on appeal to the Supreme Court from an order of the Corporation Commission fixing rates."

"It has been many times held and is the settled law of this country the facts of any given case defines the nature and fixes the principles of the law of decision applicable thereto. Of necessity, it follows, any principle of the law declared in any given case not applicable to or based upon the peculiar facts of that case is merely *obiter dictum*, decides nothing, binds no one, and may be safely ignored as furnishing no binding precedent."

"Applying this principle of the law to the facts of the Prentis case, and what is found decided therein? Namely, the obvious and conceded principle of the law that no injunctive relief will be granted by a court of equity against the threatened enactment of a law, no matter how disastrous or oppressive such law may become if once enacted and established as the law of the land. That such were facts of the Prentis case is apparent from the statement thereof made by Mr. Justice Holmes, as follows:"

" 'These are bills in equity brought in the Circuit Court to enjoin the members and clerk of the Virginia State Corporation Commission from publishing or taking any other steps to enforce a certain order fixing passenger rates.' "

"Under the Law of Virginia then in force the order of the Corporation Commission of that state, like the many legislative acts of the various states, had no binding force or effect as law until publication thereof had been made. In other words, the publication of the order of the Commission in that case was a necessary preliminary legislative step in the enactment of the law before enforcement thereof be-

came possible. It is true, the right of the railway companies affected by the order of the Commission to apply to the Supreme Court of Appeals of that state sitting in its legislative capacity for a review of the order of the Commission, and the failure of the railway companies to take such appeals prior to the institution of that suit, is much commented upon by the court in its opinion. But, in its last analysis, that which was sought to be restrained in that case by the railway companies was the completion of the exercise of legislative power employed in enforcing a confiscatory law once fully made complete and in full force and effect until set aside by some additional legislative body sitting with power to review and unmake the legislative enactment. How different, it seems to me, are the facts in the cases at bar. Here, the legislative body created by the State of Oklahoma, sitting with full power to enact into law the rates in question, did enact orders into laws of the state with full operation and power of enforcement against complainants by severe penalties for non-compliance therewith. It is true, in the cases at bar, as in the Prentiss case, complainants had the right of appealing to the Supreme Court of the State of Oklahoma sitting under the Constitution of that state not as a court exercising judicial power, but as an additional legislative body created for a review and correction of the legislative acts or orders of the Commission. However such appeals were taken by complainants in the instant cases and a suspension of the enforcement of the orders made by the Commission as law during the pendency of such appeals was applied for but denied by the Supreme Court of this state, thus leaving complainants remediless at law and subject to the full and complete enforcement of the orders of the Commission as law, unless enjoined, until final review had by the Supreme Court."

"Now it is quite positively charged in the bills

of complaint that the operation of these orders of the Commission, if obeyed by complainants until the Supreme Court of the state can or will act in the matter of review will work a confiscation of the property of complainants, ruin their business, and bring them into bankruptcy. On the other hand, if complainants take the hazard of violating these orders so made by the Commission until the Supreme Court shall pass upon them in review, and the orders shall be ultimately upheld, the fines and penalties of the law which will be enforced against them will be so great and burdensome as to bring ruin and disaster to the property and business of complainants. Thus, the question presented in these cases is not one of interference with the course of legislative proceedings in the enactment of rate laws, (as was the Prentis case) nor is it one of interference with the course of judicial proceedings in a court of the state, such as is prohibited by section 720 of the Revised Statutes, but it is a case of the right of a citizen to apply to a court of equity having full jurisdiction and power over the subject matters of the suits and the parties thereto to temporarily restrain the enforcement of the orders of the Commission, which are a part of the body of the laws of the state, against the confiscation of their property, the ruin of their business, and certain ensuing bankruptcy, unless and until the law-making power of the state may be induced to change the orders and relieve complainants from such disaster. This right of complainants to hearing, determination and temporary orders of injunction now stands denied them."

"To my mind, such a ruling, fraught with such consequences as must under the averments of the bills of complaint surely follow in these cases, should not be made in a court a conscience unless thereto conclusively impelled by controlling precedent and authority. That under its facts the Prentis

case does not absolutely control the decision of the present cases I have endeavored to show. There can be no doubt, whenever any Federal Court of the country, with the present understanding of the law, would have reached the same ultimate conclusion attained in the Prentis case, and for the all sufficient reason the order of the Virginia Commission in that case attempted to be restrained by complainants, in operation and enforcement against them, at no time during the pendency of the litigation had attained to the dignity of a law; hence there was no enforcement possible—nothing to restrain. To my mind, the test to apply in cases of this character, is this:—

“Has the order of the Commission, acting as a legislative body, reached that point whereat it has become a part of the enforceable body of the law of the state, the disobedience of which entails heavy and drastic punishments or, the observance thereof works confiscation of property? That this is the true test which must be applied is made to appear by a consideration of a few of the adjudicated cases. Thus, in *Bacon v. Rutland R. R. Co.*, 232 U. S. 134, cited in the majority opinion, Mr. Justice Holmes who wrote the opinion of the court in the Prentis case, said:—

“ ‘The court was given legislative powers, and it was held that in the circumstances it was proper, before resorting to the Circuit Court of the United States, to make sure that the officials of the state would try to establish an unconstitutional rule. But it was laid down expressly that at the judicial stage the railroads had a right to resort to the courts of the United States at once.’ ”

"In the well considered case of *Love v. Atchison T. & S. F. Ry. Co.*, the Circuit Court of Appeals for this Circuit, 185 Fed. 327, Sanborn, C. J., delivering the opinion, said:"

"The legislative function in rate-making looks to the future and determines what future rates shall be. But when rates, either tentative or final, have been put and are maintained in actual operation under the penalty of severe fines, the question whether or not their effect is to take the property of the railroad companies affected thereby without just compensation is a judicial one, conditioned by past or present facts, and the national courts cannot be deprived of jurisdiction of it by the fact that the process of making the tentative rates is yet incomplete. It is as clear a violation of the constitution, and one as promptly remediable in the national courts, to take the property of a railroad company without just compensation by the enforced operation of tentative rates during the process of their making as by the operation of final rates after that process is complete. Railroad companies that have been, are or will be deprived of parts of their property devoted to the public use of transportation without just compensation during the continuance of the rate-making process by provisions of a state constitution, or of a state law, or by orders of a state commission, prescribing tentative rates and putting them in effect during the rate making process under severe penalties, may maintain suits for and obtain relief by injunction during the continuance of the rate-making process to the same extent that they may after the process is completed. These suits were not prematurely brought."

"In all reason, I think it must be conceded the confiscation of the property of a citizen through the temporary enforcement of a rate which has reached the stage of an enforceable law or order is equally violative of the National Constitution with that of the confiscation of property by the enforcement of a permanent law. Hence, in its ultimate analysis and end, it must be held beyond the power of any state of this union, by the manner it ordains for the enactment of its rate-making laws to place beyond the reach of the courts of equity of the country the power to impose a restraining hand between the oppression and tyranny of the operation of confiscatory laws during a prolonged course of the making of rate-law after such laws have reached the stage of completion whereat they become enforceable as laws, and by the citizen must either be obeyed, to his ruin, or disobeyed, at his peril. *Ex Parte Young*, 209 U. S. 123; *Wilcox v. Consolidated Gas Company*, 212 U. S. 19; *St. Louis Iron Mt. & Southern Ry. Co. v. Williams*, 251 U. S. 63."

"For the foregoing reasons I cannot agree with, but dissent from the majority opinion."

We are thoroughly in accord with the sound principles upon which the decision in the *Prentis* case is rested, but as stated by Judge Pollock, it seems to us that there are important and controlling distinctions between that case and the one now under consideration. In the first place it will be noted that the order sought to be enjoined in the *Prentis* case was one reducing railroad fares. Under the Virginia Constitution the railroad companies were given the right to appeal from this order, and the Supreme Court of Appeals of that State was authorized to grant a supersedeas suspending the enforcement of the order pending the hearing of the case on its merits on

appeal. The proprieties should have impelled the railroads to have taken the appeals allowed them by the Virginia Constitution before resorting to the Federal Court for an injunction. In that event the Supreme Court of Appeals of Virginia might have granted the supersedeas and suspended the operation of the order and the unconstitutional rule might not have been enforced against them, at least during the pendency of the appeal. True it is that court may have denied the supersedeas, in which event we believe the Federal Court would have entertained jurisdiction of the railroads' application for an injunction against the unconstitutional rule. But the railroads neither took the appeal, nor applied for the supersedeas and it is therefore not difficult to understand why this court held, upon considerations of comity and convenience, that the filing of the bills was premature.

In holding that the most plausible objection to the bills in the Prentis case was that they were brought too soon, this court said :

“Our doubt is a narrow one and its limits should be understood. It seems to us clear that the appellees were not bound to wait for proceedings brought to enforce the rate and to punish them for departing from it.”

In the instant case the Commission is enforcing the rates and appellants would be subjected to severe penalties for violation of the orders. This court also said that the case then under consideration could hardly be disposed of on purely general principles, but that it was a question of equitable fitness or propriety “and must be answered

on the particular facts." This language also occurs:

"As our decision does not go upon a denial of power to entertain the bills at the present stage, but upon our views as to what is the most proper and orderly course in cases of this sort when practicable \* \* \*

We have heretofore attempted to point out the particular facts that differentiate the two cases, which facts, in our opinion, justify the refusal to entertain the bills in the Prentis case, but do not in this case. We believe we are sustained by authority in this position.

The case of *Atchison, T. & S. F. Ry. Co. v. Love*, 174 Fed. 59, is a case in which the plaintiff railway company brought its bill of complaint for an injunction against the Corporation Commission of the State of Oklahoma to enjoin certain passenger and freight rates on the ground that the same were so unreasonably low as to amount to a confiscation of their property, contrary to the Fourteenth Amendment to the Constitution of the United States.

The passenger rates of two cents per mile were prescribed by the Constitution of the State of Oklahoma, and the freight rates by order of the Corporation Commission. The constitution of the state gives the railway company the right of appeal, and also confers authority upon the Supreme Court of Oklahoma to suspend an order decreasing rates pending the determination of the appeal.

After pointing out that the provisions of the Oklahoma Constitution are substantially the same as those of

Virginia) Judge Hook, Circuit Judge, in holding that the Oklahoma cases had reached the judicial stage, drew the distinction between the case of *Prentis v. Atlantic Coast Line Co.*, and the Oklahoma case then under consideration, in the following language:

"It is apparent these provisions were substantially copied from those of the Constitution of the state of Virginia, which were considered, and their character and effect upon suits in the courts of the United States determined, in *Prentis v. Atlantic Coast Line*, 211 U. S. 210, 29 Sup. Ct. 67, 53 L. Ed. 150. Indeed, that case is relied upon by defendants as authority for the suspension of further proceedings in the present suits. There the State Corporation Commission of Virginia, after a thorough hearing, promulgated an order fixing two cents per mile as a maximum passenger rate. The railroad companies neither obeyed the order nor appealed from it to the Supreme Court of Appeals of Virginia; as the Constitution permitted, but at once brought suits in the Circuit Court of the United States to enjoin the commission from enforcing its order. Restraining orders were granted. On appeals to the Supreme Court of the United States it was held that the proceedings for fixing rates and charges whether in the commission or in the state Court of Appeals on appeal were legislative in character, although the principal aspect of those tribunals may be judicial; and it was said in substance, but in carefully measured terms, that the legislative process fixing the rates complained of was not so complete as to give an absolute, unqualified right to resort to the courts, and that considerations of comity and equitable fitness or propriety would be best subserved by an appeal by the railroad companies from the legislative order of the commission to the state Court of Appeals. There was a question whether

the time for such appeals had not expired, and regarding it the Supreme Court said:

"As our decision does not go upon a denial of power to entertain the bills at the present stage, but upon our views as to what is the most proper and orderly course in cases of this sort, when practicable, it seems to us that the bills should be retained for the present to await the result of the appeals, if the companies see fit to take them. If the appeals are dismissed, as brought too late, the companies will be entitled to decrees. If they are entertained, and the orders of the commission affirmed, the bills may be dismissed without prejudice and filed again.'

"In *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, 40, 29 Sup. Ct. 193, 195, 53 L. Ed. 382, the result in the Virginia cases is thus summarized:

"It is true an application for an injunction was denied in that case because the plaintiff should, in our opinion, have taken the appeal allowed him by the law of Virginia while the rate of fare in litigation was still at the legislative stage, so as to make it absolutely certain that the officials of the state would try to establish and enforce an unconstitutional rule.'

"There are, however, marked differences between the Virginia cases and those at bar. In fact, the inferences from the opinion of the Supreme Court would seem to require this court to proceed with the exercise of its jurisdiction. After the orders of the Oklahoma Commission became effective, they were obeyed by the railroad companies until, as they claim, it was demonstrated the rates prescribed were confiscatory. Whether they are right in this, or whether the test was a fair one, of course, is not now determined. Reference is merely made to the averments in the bills. If the effect of the rates upon the property and business of a company is doubtful, an experimental observance of the order prescribing them is a commendable course (*Knox*,

*ville v. Water Co.*, 212 U. S. 1, 29 Sup. Ct. 148, 53 L. Ed. 371; *Willcox v. Consolidated Gas Co.*, *supra.*); and by its adoption the company should neither lose any of its rights nor be embarrassed in the assertion of them, except so far as the results of a practical application of the rates may afford proof against its contentions. The complainants applied to the commission to certify to the Supreme Court of Oklahoma for review of the records relating to the various rate orders, and to fix the terms and amounts of supersedeas bonds to be executed by them. The Commission declined to do so. They then applied to the Supreme Court, which awarded writs of mandamus requiring the sending up of the records. The Commission still declining to allow a suspension of the orders pending the appeals, complainants applied to the Supreme Court for that purpose, but their request was denied.

"The result is that, though appeals have been taken and are pending the various orders complained of are still in force, and complainants must either obey them or take the chance of the penalties for disobedience. Even if the rates complained of may be said to be still in process of formation, yet, if they are confiscatory, as alleged, an injury to complainants is being inflicted as fully and irreparably as though by a completed legislative act or order. It is none the less violative of their rights under the Constitution that the injury arises from an enforced compliance with a tentative or uncompleted rule. The doctrine of the Virginia cases rests on considerations of orderly procedure in equity and a due regard for the governmental departments of the State; but it did not appear in that case, as here, that the rates first promulgated were being enforced, and that the railroad companies could not obtain a suspension of them pending the appeals which the court said should have been taken. The difference between the cases is a vital one."

The same case came before the Circuit Court of Appeals and is reported in 185 Fed. at page 321, and Judge Sanborn, Circuit Judge, in sustaining Judge Hook on the jurisdictional question, in the first paragraph of the syllabus in that case held:

"Railroad companies that have been, are, or will be deprived of parts of their property devoted to the public use of transportation without just compensation during the continuance of the rate-making process by provisions of a state Constitution, or of a state law, or by orders of a state commission, prescribing tentative rates and putting them in effect during the rate-making process under severe penalties, may maintain suits for and obtain relief by injunction during the continuance of the rate-making process to the same extent that they may after the process is complete.

"It is as much a violation of the fourteenth amendment to the Constitution to take the property of a railroad company without just compensation during the process of rate-making as it is after the completion of that process."

Upon appeal to this court Petition for Writ of Certiorari to the Circuit Court of Appeals was denied, 220 U. S. 618.

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In *Northwestern Bell Telephone Co. v. Hilton et al.*, 274 Fed. 384, Judge Booth, in the second paragraph of the syllabus, held:

"In suits by telephone companies to enjoin state officials from enforcing existing telephone rates and an order of the state Railroad and Warehouse Commission denying an increase of rates, a company alleging diversity of citizenship, and that more than

\$3,000 was involved, and that the order denying an increase of rates would deprive the company of its property without due process of law, contrary to Const. Amend. 14, No. 1, that the existing schedule was noncompensatory and confiscatory, and that, if the company disregarded the order and the existing schedules, it would be subject to criminal prosecution and punishment by fine or imprisonment, on its face stated a cause of action within the jurisdiction of the federal court."

In the case of *Willcox v. Consolidated Gas Company*, 212 U. S. 19, 53 L. Ed. 382, this court said:

"They assume to criticise that court for taking jurisdiction of this case, as precipitate, as if it were a question of discretion or comity, whether or not that court should have heard the case. On the contrary, there was no discretion or comity about it. When a Federal Court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction (*Cohans v. Virginia*, 6 Wheat. 264, 404), and in taking it that court cannot be truthfully spoken of as precipitate in its conduct. That the case may be one of local interest only is entirely immaterial, so long as the parties are citizens of different states or a question is involved which by law brings the case within the jurisdiction of a Federal Court. The right of a party plaintiff to choose a Federal Court where there is a choice cannot be properly denied. *In re Metropolitan Railway Receivership*, 208 U. S. 90-110; *Prentis v. Atlantic Coast Line et al.*, 211 U. S. 210. In the latter case it was said that a plaintiff could not be forbidden to try the facts upon which his right to relief is based before a court of his own choice, if otherwise competent."

In *Chicago Railroad Company v. Illinois Commerce Commission*, 277 Fed. 970, a very recent case that was heard before Evans and Page, Circuit Judges, and Carpenter, District Judge, upon application for a temporary injunction enjoining the Illinois Commerce Commission from enforcing the rates of fare prescribed by it to be charged by the Chicago Railroad Company, the court said:

"The defendants urge *Prentis v. Atlantic Coast Line*, 211 U. S. 210, as defeating the jurisdiction of this court because the record does not disclose that the plaintiffs have applied for the rehearing provided for in Section 67 of the Public Utilities Act.

"The order of the Illinois Commerce Commission was a complete exercise of the legislative power of the state and was in force immediately after its passage, notwithstanding a motion to reconsider might have been urged and entertained. If the state of Illinois, vesting the power to regulate rates in the Commerce Commission, had provided that the orders of the Commission should not be put into effect until after a certain time within which an application for a rehearing could be made, another question would be involved, but the Statutes of Illinois did not so provide, and the granting or denying of a petition for rehearing being wholly within the discretion of the Commission, the legislative act was complete upon the entry of the order."

"The question involved here is that of a United States Court exercising power under the Constitution of the United States to protect a citizen against the alleged confiscation of its property by some agency of a state.

"The matter is of extreme importance because the relief prayed for interferes with the Illinois Commerce Commission, and would stop *ad interim*

the regulatory power of the State over public utilities. It is a very serious and very grave matter, and all doubts are resolved against the plaintiffs. If, however, the record discloses that the order of the State Commerce Commission is in fact a confiscation of private property without adequate and just compensation, this court not only has the power to act, but is in duty bound to exercise that power."

"It is quite apparent from a reading of *Prentis v. Atlantic Coast Line*, above referred to and relied upon by defendants, that there the court of first instance was the final legislative body, just as in this case the Illinois Commerce Commission was the final legislative body. The Prentis case was carefully considered by Judge Hook in *A. T. & Santa Fe Railway Company v. Love et al.*, 174 Fed. 59, and by Judge Sanborn in the same case on appeal, 185 Fed. 321; and the logic of the opinions in those cases makes it quite impossible for a different conclusion to be reached here.'

"With reference to the plaintiffs in this case, it is clear that prosecution for violating the order of the Commission would not be suspended by the application for a rehearing.

"The character, force and effect of the Commission's order while it remained in operation is in no respect modified or affected by the opportunity given by the statute to apply to the Commission for a rehearing; and however the order be styled, it is nevertheless, until it is changed or rescinded, the final legislative act of the state of Illinois. For an indeterminate time, at least, it is complete and binding so far as is concerned the public utility affected."

See also *Palermo Land & Water Co. v. Railroad Commission of California*, 227 Fed. 708.

**Section 23 of Article 9 of the Oklahoma Constitution does not defeat appellant's right to injunctive relief in the Federal Court.**

Judge Cotteral in his written opinion emphasized the point under Section 23, Article 9, of the Constitution it was the duty of the Supreme Court of the State of Oklahoma to substitute in lieu of the order of the Commission, such order as the Commission should have made at the time, and in this way restore to appellants such compensation as they may have temporarily lost by the rulings of the Commission.

The provision referred to reads as follows:

"Whenever the court, upon appeal, shall reverse an order of the Commission affecting the rates, charges, or the classifications of traffic of any transportation or transmission company, it shall at the same time, substitute therefor such orders as, in its opinion, the Commission should have made at the time of entering the order appealed from; otherwise the reversal order shall not be valid. Such substituted order shall have the same force and effect (and none other) as if it had been entered by the Commission at the time the original order appealed from was entered."

The Constitution (Sec. 21, Art. 9) and laws of Oklahoma (c. 10, Session Laws, Okla. 1913), require a utility that has obtained a supersedeas in its appeal from an order reducing rates to give security guaranteeing the repayment of all money collected in excess of the rates that are finally fixed by the Supreme Court under the above provision, and further provides for the payment of the entire amount due patrons to the Commission. All rebates not claimed revert to the state.

Where a supersedeas is denied, there is no provision made whereby a utility is given security or may collect from patrons increased rates if such are finally awarded. In this situation there is no practical way for the utility to avoid having its property confiscated pending the appeal. The penalties for violation of the orders immediately attach upon the making of the orders and the denial of the supersedeas, and the utility is powerless to protect itself unless jurisdiction is exercised, upon application, by the Federal Courts.

If there was a certainty that the State Supreme Court upon the determination of the legislative appeal would find and declare the prescribed rates unreasonable and unjust, and would substitute an order increasing them retroactively, then, if the state could require appellants to sell its gas and render their service on credit, and would insure that the amounts due appellant under such substituted order would be paid, appellees' contention as to the effect of Section 23, Article 9, of the Constitution might have merit. But appellants have no assurance that when the court passes on the legislative appeals it will hold the prescribed rates unjust and unreasonable and will substitute other and higher rates. The court may affirm the prescribed rates. That is entirely within the range of possibility. This court recognized that fact in the Prentis case. Should it affirm the prescribed rates, the same would not be an adjudication as to their reasonableness or confiscatory character, but would be a mere legislative finding and declaration, and would not be *res judicata*, and would not conclude appellants. In

other words, if the rates, though affirmed legislatively by the State Supreme Court, are in fact confiscatory, then appellants would be, and during all the past period when said rates have been in effect they would have been deprived of their property without due process of law. Should they then procure an injunction against the rates thus affirmed, inasmuch as appellants would not have had either a supersedeas or a temporary injunction during the pendency of the appeal, and since, therefore, they would not have collected reasonable rates during that time, and would not have the same in their hands, the injunction then obtained would not preserve to appellants the reasonable compensation to which they were entitled in the meantime, because they would not have collected any to preserve; and, since the injunction would operate only prospectively, that is enjoin the enforcement of the prescribed rates from the date of the injunction on, the Federal Court could not restore to appellants the just compensation for the service rendered to which they had been entitled all the time. The result would be that the state could thus, by dividing the process into two steps, first making and enforcing the tentative order, and then affirming it, deprive appellants of their property without due process of law for an indefinite period, and its act in so doing would be irremediable. It could make and enforce for an indeterminate period a tentative confiscatory order, and then legislatively declare it just, and thus leave appellants without a remedy as to the property of which they were deprived in the meantime, although

the rate order might be confiscatory in fact and might be so declared by this court.

Inasmuch as no state may deprive a person of his property without due process of law, it follows that no state may put a person in a situation, or require him to submit to a condition, that will enable the state to deprive him of his property without due process. In other words, no state has the right for a period of time to take a person's property without due process, and say to him that at the end of that time he may have no assurance that the property thus taken will be restored to him. No state has a right to command a person to put himself in a situation where he may be compelled, without redress, to submit to the confiscation of his property.

In this case, the State of Oklahoma, in effect, says to appellants: "Get ready to let me deprive you of your property without due process of law. Put yourself at my mercy. Put into effect confiscatory rates for the service you render. At some future time I will declare to you whether in my legislative judgment those rates are confiscatory. You can not control my declaration. Although the rates may be confiscatory in fact, I can, either wrongfully or through error, declare them to be reasonable and just. Having gotten ready to let me deprive you of your property without due process of law by putting into effect the confiscatory rates without any security for compensation to you in the event they are confiscatory, then the next step will be that I may, either wrongfully or through error declare them to be just and reasonable. That finding and declaration will

not be an adjudication, and will not constitute the question whether they are confiscatory *res judicata*. That finding and declaration will not be due process of law. You may then go into a Federal Court and procure an injunction against the enforcement of the rates and show that they are and have been at all times confiscatory, but as to the service rendered up to the time you actually procure the injunction, you will be remediless, and I will have deprived you of your property without due process of law during that period. By dividing the proceeding into two steps, I will have accomplished indirectly what the Constitution of the United States says that I may not accomplish at all; that is, by making you temporarily serve at a confiscatory rate, without any provision for securing or restoring to you the compensation you were really entitled to all the time, and then by either arbitrarily, wrongfully or erroneously declaring the rate to have been just all the time, whether it was so in fact or not, you will have been deprived of your property during that entire period without due process of law, and your property will have been taken during that period for public use without just compensation." If a state may require a person to put himself in a situation or submit to a condition where it may deprive him of his property without due process of law, and leave him remediless, then the state may violate the Fourteenth Amendment.

Inasmuch, therefore, as appellants are not permitted to collect reasonable rates during the pendency of the appeal, and inasmuch as neither the state nor any of ap-

pellants' consumers have entered into an undertaking or assumed an obligation to pay appellants the just compensation for the service rendered from January 1, 1922, to the determination of the appeal, if the court affirms this order, it follows that Section 23 of Article 9 of the Constitution, even though it has the effect for which appellees contend, affords appellant no protection against either arbitrary or erroneous legislative action on the part of the state operating to deprive appellant of its property without due process of law.

Also, it must be remembered that this is not a case in which merely the title to property is involved, which property remains and may be subject to proper disposition at the end of the litigation with damages for withholding it; nor is it litigation as to whether or not a contract may be performed, performance of which may be enforced, together with compensation for the delay, at the end of the litigation. As to a public utility's service, if it is deprived of just compensation for a year or two years, that property, that just compensation, is gone and is taken from it forever. Unless the just compensation is put where appellants can get it in the event it is adjudged to have been entitled to it, then the just compensation does not await the determination of the litigation, and all that appellants could get from an injunction in the Federal Court would be future protection, and not the restoration of the property of which they have wrongfully been deprived during the interim.

Nor will the presumption that the State Supreme Court will act rightly in determining the legislative ap-

peal affect the situation. It may not. Appellants are not required to take that chance. They are not required to take the chance of confiscation. If such effect is to be given that presumption, then the Fourteenth Amendment would never have been adopted. There could be no occasion for providing against something that is conclusively presumed will not happen.

We do not believe such a suspension of the Constitutional rights of these appellants is authorized upon the ground of comity. If so, it is possible to bankrupt every utility in the state during the rate-making process. In *Mountain Timber Co. v. State of Washington*, 243 U. S. 217, this court, page 237, said:

"The question whether a state law deprives a party of rights secured by the Federal Constitution depends not upon how it is characterized but upon its practical operation and effect."

The order of the Corporation Commission is now being enforced against these appellants and if the holding of the lower court is correct because this law may be changed at some distant date the rights of these appellants secured to them by the Federal Constitution, can be held in abeyance.

In *St. Louis, Iron Mountain and Southern Railway Co. v. Williams*, 251 U. S. 63, this court said:

"It is true that the imposition of severe penalties as a means of enforcing a rate, such as was prescribed in this instance, is in contravention of due process of law, where no adequate opportunity is afforded the carrier for safely testing, in an ap-

*propriate judicial proceeding, the validity of the rate—that is, whether it is confiscatory or otherwise—before any liability for the penalties attaches.* The reasons why this is so are set forth fully and plainly in several recent decisions and need not be repeated now. *Ex parte Young*, 209 U. S. 123, 147; *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19, 53; *Missouri Pacific Ry. Co. v. Nebraska*, 217 U. S. 196, 207-208; *Missouri Pacific Railway Co. v. Tucker*, 230 U. S. 340; *Wadley Southern Ry. Co. v. Georgia*, 235 U. S. 651, 659, *et seq*" (italics ours).

"And it also is true that where such an opportunity is afforded and the rate is adjudged valid, or the carrier fails to avail itself of the opportunity, it then is admissible, so far as due process of law is concerned, for the state to enforce adherence to the rate by imposing substantial penalties for deviations from it. *Wadley Southern Ry. Co. v. Georgia*, *supra*, p. 667, *et seq*; *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 246 U. S. 58, 62."

"Here it does not appear that the carrier had not been afforded an adequate opportunity for safely testing the validity of the rate, or that its deviation therefrom proceeded from any belief that the rate was invalid. On the contrary, it is practically conceded—and we judicially know—that if the carrier really regarded the rate as confiscatory, the way was open to secure a determination of that question by a suit in equity against the Railroad Commission of the state, during the pendency of which the operation of the penalty provision could have been suspended by injunction. *Wadley Southern Ry. Co. v. Georgia*, *supra*. See also: *Allen v. St. Louis, Iron Mountain & Southern Ry. Co.*, 230 U. S. 553; *Rowland v. St. Louis & San Francisco R. R. Co.*, 244 U. S. 106; *St. Louis Iron Mountain & Southern Ry. Co. v. McKnight* *ibid*, 368."

The appellants in the instant case regard the prescribed rates as confiscatory and although the rates are being enforced against them under penalty of enormous fines while their appeals are pending legislatively before the Supreme Court of the state, yet the lower court would not grant an injunction suspending the rates until such time as the question could be finally determined. The liability for penalties in the instant case has attached and these appellants were refused an injunction although, as this court said in the above case, the due process of law amendment is contravened where no adequate opportunity is afforded the carrier for safely testing in an appropriate judicial proceeding, the validity of the rate—that is, whether it is confiscatory or otherwise—before any liability for the penalties attaches.” Again this court in the case of *Riverside, etc., Mills v. Menefee*, 237 U. S. 129, clearly indicated that comity does not authorize the suspension of the constitutional guarantees, when it said:

“Wherever a provision of the constitution is applicable the duty to enforce it is imperative and all-embracing, and no act which it forbids may therefore be permitted.”

**Denial of the supersedeas by the Supreme Court not an adjudication.**

Appellees, in their brief filed in the lower court made the contention that the denial of the superseadeas by the Supreme Court of the State constituted a final adjudication. In view of the Oklahoma constitutional provisions we cannot understand this proposition, the pertinent provisions being as follows:

"No court of this state except the Supreme Court by way of appeals as herein authorized, shall have jurisdiction to review, reverse, correct or annul any action of the Commission within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties" (Article 10, Section 20).

"Upon the granting of an appeal the writ of supersedeas may be awarded by the Supreme Court suspending the operation of the action appealed from until the final disposition of the appeal, but prior to the final reversal thereof by the Supreme Court. No action of the Commission prescribing or affecting the rates, charges or classification of traffic of any transportation or transmission company shall be delayed or suspended in its operation by reason of any appeal, by such corporation or by reason of any proceedings resulting from such an appeal until the suspending bond shall first have been executed \* \* \*." Art. 9, Section 21.

Article 9, Section 22 provides:

" \* \* \* The Supreme Court shall have jurisdiction on such appeal to consider and determine the reasonableness and justness of the action

of the Commission appealed from as well as any other matter arising under such appeal \* \* \*."

Article 9, Section 23 is as follows:

"Whenever the court upon appeal shall reverse an order of the Commission affecting the rates, charges or classifications of traffic \* \* \* it shall at the same time substitute therefore such order as in its opinion, the Commission should have made at the time of entering the order appealed from, otherwise the reversal order shall not be valid. \* \* \*"

A reading of the above sections of the Constitution it is believed affords a complete answer to the contention made below if urged in this court. No court of the state can interfere in any way with an order of the corporation Commission since no judicial review is provided under the Oklahoma Constitution. An appeal is granted to the Supreme Court of the state and such body then acts in its legislative capacity. It is by the constitution prohibited from hearing any new evidence, and we are at a loss to understand how the denial or the granting of a supersedeas, an intermediate step can be a final judicial determination of the controversy when the final decision of the court is not. These appellants cannot, upon the decision of the appeal, go by writ of error to this court, but they must start all over in the United States District Court. This was decided in the Prentis case, *supra*.

### Test Period.

It was also contended in the lower court that these appellants, although the rates that were complained of became effective July 1, 1921, during which period they proved confiscatory, should nevertheless continue under them without complaint until some future indeterminate date. It will be remembered that in the order effective July 1, 1921, a slight increase in rates was given. In December appellants filed their appeals in the Supreme Court of the state, the six months period allowed by the constitution in which utilities may appeal having almost expired. Under the rates in force during that period, the effect on appellants business is shown by the table at page 296½ of the printed Transcript. It shows that in each and every division which appellants operate from July 1st, 1921 to November 30, 1921, an actual deficit was suffered for each month. Yet appellees contend, evidently because appellants are not yet bankrupt, that they should continue for some indefinite period without complaint, to submit to this ruinous condition. As a result of the hearing before the Corporation Commission, December 31, which was ordered by the Supreme Court, another slight increase in rates was granted. The Commission throughout its orders assumed that appellants would sell the same amount of gas during the year 1922 at this increase in rates as they did during the year 1921. We have already shown, assuming as did the Commission in its order that the company will sell at the increased rate the same volume of gas it did at the lower rate, which

is contrary to every known economic law, that the rates so fixed are confiscatory. What is the practical benefit of a test period in this case? In the case of *City of Louisville v. Louisville Home Telephone Co.*, 279 Federal 949, the same argument urged by appellees herein was evidently there made. The court answered the contention as follows:

"It is said that, before an injunction issues suspending a legislatively fixed rate, there should be a trial period. This has often been thought a proper preliminary step (*Minnesota Rate Cases*, 230 U. S. 352, 436, 33 Sup. Ct. 729, 57 L. Ed. 154, 43 L. R. A. (N. S.) 1151, Ann. Cas. 1916A, 18; *Consolidated Gas Case*, 212 U. S. 19, 54, 29 Sup. Ct. 192, 53 L. Ed. 382, 15 Ann. Cas. 1034; *Knoxville Water case*, 212 U. S. 1, 17-19, 29 Sup. Ct. 148, 53 L. Ed. 371) though we think the conclusion has always been a discretionary one upon the facts of the particular case, and that there has never been any hard and fast rule to that effect. In any event, the present situation is not closely analogous to those in which the trial period has been required. In the railroad cases, as well as in the gas and water cases, the challenged law had reduced the existing rate. This would inevitably tend to increase the number of customers and to diminish the applicable overhead. These was plausible insistence that the net result would be, or might be, a gain and not a loss. In the present case, and in a very fair sense, there had been a trial period. For the year 1920, the last year of the franchise rates, the gross receipts and the operating expense and the net income were known. The company claimed that it received no substantial return upon its investment. The city did not deny that the company was entitled to an increase in rates. The temporary

ordinance, which was rejected by the company as insufficient, and which is now under attack, increased the rates between 20 per cent. and 25 per cent above the old ordinance. It is not to be doubted that the tendency of this increase, considered alone, would be to lessen the number of customers, and thereby diminish the gross receipts and increase the distributed overhead. The main reason for requiring a trial period thus seems to be absent."

**The rates provided by the Oklahoma corporation are confiscatory.**

If this court holds, as we anticipate it will, that the appellants' bill in equity was not prematurely brought, and that the Federal Court for the Western District of Oklahoma should have proceeded to a hearing of the case upon its merits, the question then presented is, whether the appellants were entitled to the temporary injunction at the time of the hearing. The rate is confiscatory and should be enjoined as being in violation of the Fourteenth Amendment to the Constitution of the United States when it does not give a utility a fair and adequate return upon its property used and useful in serving the public.

*Reagan v. F. L. & Trust Co.*, 154 U. S. 362, 38 L. Ed. 1014.

*Corvington & Lexington Turnpike Road Co. v. Sanford*, 164 U. S. 578, 41 L. Ed. 560.

*Smyth v. Ames*, 169 U. S. 466, 42 L. Ed. 819.

*Brooks Scanlon Co. v. R. R. Com. of La.*, 251 U. S. 396, 64 L. Ed. 323.

*Northern Pacific R. R. Co. v. North Dakota*, 236 U. S. 595, 59 L. Ed. 741.

*Denver v. Denver Union Water Co.*, 246 U. S. 178, 62 L. Ed. 649.

*Rowland v. St. Louis*, 244 U. S. 106, 61 L. Ed. 1022.

The elements for consideration in determining this question are:

1. Present fair value of the utility's property.
2. Its operating expenses (in this case including the cost of gas).
3. Amount necessary to be earned for depreciation.
4. Return on fair value of the property.
5. The utilities gross and net revenue.

Assuming that the sales of gas in the cities and towns involved will be the same in volume in 1922 as they were for 1921, and that the operating expenses will also be the same as is claimed by the Commission, the gross revenue derived under the rates prescribed by the Commission in the Oklahoma City Division will be as follows:

The gross revenue from sales of gas in the Oklahoma City Division will be \$1,308,628.00 (Pr. Tr. 187) and the cost of gas will be \$997,093.00 (Pr. Tr. 187).

Other operating expenses for the year ending Sep. 30, 1921, exclusive of depreciation, amortization and return, amount to \$235,971.00, making a total outlay of \$1,233,064.00, which would leave available for depreciation, amortization and return under the present rates in the Oklahoma City Division \$75,564.00 (Pr. Tr. 187).

The Corporation Commission has uniformly allowed 5 per cent depreciation and 8 per cent for return, and although appellants contend they are entitled to 10 per

cent for return, for the purpose of this case, in determining whether the rate is confiscatory 8 per cent may be regarded as the test.

The present fair value of the property as shown by the affidavits introduced by appellants at the hearing in the District Court in the Oklahoma City Division is \$2,660,583.00 including going concern, working capital and other items of an intangible nature; and is \$1,942,828.00 excluding said items (Pr. Tr. 276). Therefore it will be seen that a net return of \$75,564.00 upon the first named valuation would be 2.8 per cent and on the second it would be 3.8 per cent. In the first instance it would be 10.02 per cent short of an adequate return, and in the second 9.02 per cent.

Thirteen per cent upon a valuation of \$2,660,583.00 is \$345,875.00 and 13 per cent upon \$1,942,828.00 is \$252,567.64. This reflects in dollars and cents the amount of money necessary to give the utility a fair return in the Oklahoma City Division. Subtracting appellants net return of \$75,564.00 it is shown that under the rates prescribed the appellant will receive \$117,003.64 less than it is entitled to on the lower valuation.

A net return of \$75,564.00 upon the Corporation Commission's final original cost value of \$1,762,025.00 (Pr. Tr. 160) would be 4.2 plus per cent, which is less than 5 per cent for depreciation and leaves absolutely nothing for return.

The following table will indicate the conditions in the other divisions:

	Including going concern, valuation, capital, etc. (Pr. Tr. 276)	Excluding going concern, valuation, capital, etc. (Pr. Tr. 276)	Commis- sions original cost valuation (Pr. Tr. 175 & 171)	Net Returns for 1921 (Pr. Tr. 194 & 208)
Enid	662,766.00	457,770	426,944.55	28,745.00
El Reno	354,146.00	256,828.00	230,680.08	10,261.00
Muskogee	1,191,723.00	886,051.00	835,685.51	-6,044.00

From the above data based upon the evidence in the record it is clear that the rates prescribed by the Commission are unremunerative and non-compensatory and amount to a confiscation of appellants properties upon any calculation that may be taken for the purpose of determining the question.

### **Analysis of Commission's Findings.**

In the first paragraph of the Commission's findings under the title replacement cost (Pr. Tr. ~~154~~ <sup>155</sup>), after reciting that the replacement cost on August 1, 1921, is \$2,693,492.00, it found that this amount included, according to the practice of the company in reporting expansion of the plant from time to time, and consistent with Mr. Musson's, its engineer, testimony, physical plant cost, other than for labor and material, of \$434,350.00, this sum covering items such as engineering, interest, taxes, superintendence, legal expense, injuries during construction, etc. We respectfully submit that this was error.

According to their engineer's, Mr. Musson, testi-

mony and the practice of valuation engineers generally, and the decisions of practically all the courts so far as we have been able to find, overheads are recognized as being just as much a part of the valuation of a utility's physical property as the labor and material that constitute its component parts. In the original construction of a plant and in making additions and betterments thereto it was necessary for appellants to incur overheads during construction consisting of engineering, and supervision, law expenses, interest, injuries and damages, taxes and other items not classified as labor or material, but without which the plant could not have been constructed, and if the plant were to be reconstructed today all of these elements would enter into the cost of construction. This is due to the fact that overhead costs are in large measure, if not entirely, applicable to the project as a whole. Nevertheless, experience or knowledge derived from expenditures for overhead costs in actual construction work may be used as a guide for estimating overhead costs for the purpose of appraisal. Such experience has been reduced to a percentage basis and it is customary among engineers and appraisers to determine the amount in this way. The difference in method of estimating specific construction costs, consisting of labor and material, based on unit prices, and of estimating overhead costs on a percentage basis does not alter their inherent similarity as parts of the physical property. It is only after the overhead costs, as distinguished from such intangible elements as going value, have been specifically included that the total physical property value can be shown. We have

been unable to find any authority holding that such items should be eliminated in finding the replacement value of the property.

It is true the Commission later in its order (Pr. Tr. 59) added 20% to cover overheads, going concern, and working capital; but it was after first deducting the \$434,350.00 for overheads. We submit that the proper and fair method would have been to have added 20% for going concern value and a reasonable allowance for working capital without having first deducted the items of overhead. They are separate and entirely distinct elements of valuation. If they were properly included at first and erroneously deducted by the Commission then nothing was added by the Commission for going concern and working capital, or if the 20% represent going concern value nothing has been allowed for working capital and overheads during construction. In discussing original cost the Commission itself recognized overhead costs during construction as proper items to be included in arriving at a valuation of utility's property (Pr. Tr. 160).

**Original or historical cost of plant is not proper basis for rate making.**

The Commission failed to adopt the present fair value of appellants' property at the time of the inquiry as the basis for rate-making but on the contrary based all its calculations upon the original or historical cost of the property (Pr. Tr. 160). This we submit was error. The latest expression of this court on this sub-

ject is to be found in the case of *Houston v. Southwestern Bell Telephone Company* (opinion filed May 29, 1922, not yet officially reported) in which it was said:

"In its cross appeal The Company assigned as error the holding of the district court that the merger ordinance of 1915 obliges the Company to accept the cost of its physical plant as the basis for rate making, instead of the usual basis, the value, at the time of the inquiry, of the property used and useful in operating the plant. *Willcox v. Consolidated Gas Co.*, 212 U. S. 19, Minnesota Rate Cases 230 U. S. 352, *Denver v. Denver Union Water Co.*, 246 U. S. 178. \* \* \* We think that neither party was bound by the ordinance and the acceptance of it, that the district court fell into error, and that the proper base for rate making in the case is the fair value of the property, useful and used by the Company at the time of the inquiry."

In the case of *Consolidated Gas Co. v. Newton*, 267 Fed. 231, recently affirmed by this court, opinion filed March 6, 1922, reproduction cost was held to be the determining factor.

"The rule of the present reproduction cost, which is a necessary consequence of the foregoing argument, appears to me to have been either expressly or implicitly recognized in all the cases in which the Supreme Court has passed on these matters. *Wilcox v. Consolidated Gas Co.*, 212 U. S. 19, 29 Sup. Ct. 192, 53 L. Ed. 382, 15 Ann. Cas. 1034, 48 L. R. A. (N. S.) 1134; *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153, 35 Sup. Ct. 811, 59 L. Ed. 1244; *Knoxville v. Knoxville Water Co.*, 212 U. S. 1, 10, 29 Sup. Ct. 148, 53 L. Ed. 371; The Minnesota Rate Cases, 230, U. S. 352, 434, 455, 33 Sup. Ct. 729, 57 L. Ed. 1511, 48 L. R. A.

(N. S.) 1151, Ann. Cas. 1916 A, 18; *San Diego, etc., Co. v. National City*, 174 U. S. 739, 757, 19 Sup. Ct. 804, 43 L. Ed. 1154; *San Diego, etc., Co. v. Jasper*, 189 U. S. 439, 442, 23 Sup. Ct. 571, 47 L. Ed. 892; *Darnell v. Edwards*, 244 U. S. 564, 568, 37 Sup. Ct. 701, 61 L. Ed. 1317. It is true that its application has not distinctly arisen since the recent rise in prices, but it is not possible that it should have general application, and yet not cover this, its most glaring illustration."

Regardless, however, as to whether reproduction value is the proper basis for determining the present fair value of the property or not, there can be no doubt but what the adoption of a value based upon original or historical cost is unauthorized.

In the case of *Joplin and Pittsburg Railway Co. v. Public Service Commission of Mo.*, 267 Fed. 584, Judge Van Valkenburg stated:

"It is my judgment that the great weight of authority is against the adoption of the standard of original cost as a determining basis for present controlling value. The present fair value is the object to be attained."

In the later case of *St. Joseph Railway, Light, Heat and Power Co. v. Public Service Commission of Missouri*, 268 Fed. 267 the court said:

"It appears upon the fact of the report (of the Commission) that great, if not undue emphasis was laid upon the original cost of the property."

"It follows that the method of valuation adopted by the Commission in the case at bar was wrong, and that the resulting computation necessarily reduced the total valuation of complainant's property

so substantially as to make the rates based thereon inadequate and practically confiscatory. For this reason, it will be unnecessary to resolve other questions presented by the briefs. By common consent this was deemed the crucial question. The court does not undertake to lay down any hard and fast rule in the premises. Many elements must enter into the final determination of a question of this nature. It is sufficient that the procedure disclosed by this record leads unavoidably to the conclusion that the relief prayed must be granted."

In *Landon v. Court of Industrial Relations*, 269 Fed. 443, at page 444, the court cited with approval the cases to which we have just referred and quoted from *Lincoln Gas Co. v. Lincoln*, 250 U. S. 256, as sustaining the same proposition, as follows:

"The court notices judicially that principally, owing to the war, cost of labor and supplies have advanced greatly since the ordinance was adopted and largely since the case was last heard in the court below, and that annual returns upon capital and enterprize the world over have materially increased so that what would have been a proper return for capital in gas plants and other public utilities a few years ago furnishes no safe criterion for the present or the future."

**The commission erroneously deducted money invested in extensions.**

The commission found in its order that \$79,566.00 of the cost of the company's distributing system in the Oklahoma City division had been paid for by consumers and did not represent money invested by the Company. (Pr. Tr. 155.) This amount included \$21,404.97 advanced by consumers under extension contracts with the Company since June 14, 1914, which was shown by the reports of the Company. The Commission in its order claims that the appellant did not offer any figures touching amounts paid by patrons prior to June 14, 1914, and assumes the same percentage. The facts are that the extensions subsequent to June 14, 1914, were made by the Company under contracts with consumers and that prior to that time the extensions were made by the Company, but not under contracts with consumers (Pr. Tr. 294). On account of this mistake of the Commission the \$21,494.07 should have been deducted in any event but the deduction of \$79,566.00 claimed to have been paid for by consumers, from the valuation of appellants' property, upon which no return was even attempted to be allowed, was erroneous as a matter of law. It was the company's property and it was immaterial whether the company required it under contracts, whether it was given to it, or from what source it obtained it. It being the property of appellant used and useful in serving the public, appellant is entitled to a return thereon.

This precise question was before the Supreme Court

of Kansas in the case of *City of Baxter Springs v. Bilgers Estate*, 204 Pac. 678, not yet officially reported in the Kansas State Reports. In denying the claim that similar items should be deducted in arriving at the value of a utility's plant the court said:

"If the consumers put in the service lines, they may have claims against the company for the expense of doing the work, unless they have been paid in some manner before this time. As between the city and the company, the service lines belonged to the company and were a part of the property that the city elected to purchase. Deductions from the value of the plant on account of service lines owned by consumers should not have been made. This compels a reversal of the judgment and is possibly all that need be said, but the other matters argued will be discussed."

### Supervision Charge.

The Commission also erred in finding that the company's operating expenses had been excessive as follows:

For the year ending:

1916 .....	\$18,940.48
1917 .....	21,523.15
1918 .....	25,621.04
1919 .....	41,983.16
1920 .....	36,443.72
1921 .....	41,757.56

Total	<hr/> \$204,668.67
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and which it deducted from the operating expenses and added to net earnings, thereby increasing in its calculations, the net revenues for each year(Pr. Tr. 161).

These items the Commission stated, represented the management fee paid to the Byllesby Engineering and Management Corporation, and that it amounted to two and one-half per cent (2.5%) of appellant's gross earnings. The Commission was in error as to the amount of the charge, as it is only one and twenty-five hundredths per cent (1.25%) of the gross earnings that is paid to the management corporation, and charged to operating expenses (Pr. Tr. 293). Thus, for 1921 the supervision fee charged to operating expenses in the gas department of the Oklahoma City Gas and Electric Company's properties, including the Oklahoma City division, Muskogee, Enid and El Reno, was \$29,328.06, distributed as follows:

El Reno Gas Department .....	\$ 1,511.38
Enid Gas Department .....	2,976.06
Muskogee Gas Department .....	6,582.09
Oklahoma City Gas Department...	18,258.53
(Pr. Tr. 293.)	

From the above the court will note that there is an error in the Commission's estimate in operating expenses alone in the Oklahoma City Division for the year 1921, of approximately \$23,500.00, which error runs through practically all the Commission's calculations, both as to the valuation of appellants' distributing system and operating expenses.

This management fee was and is a legitimate operating expense incurred by the company under sound business management, and there is no evidence whatever in this record showing that the same is not a proper

charge. On the contrary, at the hearing in the United States Court for the Western District of Oklahoma, the charge was thoroughly justified. It was shown by the affidavit of Mr. Arthur S. Huey, vice president of the Byllesby Engineering and Management Corporation (Pr. Tr. 257 to 271) that the Byllesby Engineering and Management Corporation is engaged in the engineering business and in the business of supervising and managing public utility properties in more than four hundred cities and towns (Pr. Tr. 258). Employed, as it is, by this large number of public utilities, it can keep in its constant employ, a highly trained force of engineers, electric, gas, steam, construction, civil and hydraulic, auditors, accountants, rate experts, tax experts, insurance specialists and an efficient publicity bureau, together with a skilled purchasing department. It is self-evident that appellants, with out the aid of this organization could not have the benefit of such services. They would be financially unable to maintain such an organization of their own, and if they adopted the policy of trying to employ experts as needed, the difficulties in locating the proper experts and in securing their services just when most desired would be practically unsurmountable. Under the present arrangement appellants are in constant touch with these experts and can secure their services when desired. For this privilege appellants retain the Byllesby Engineering and Management Corporation for the nominal fees shown above. This fee covers ordinary consultation, while for any extraordinary service a moderate charge is made.

The Byllesby Engineering and Management Corporation, in addition acts as fiscal manager for appellants securing for them the necessary capital for extensions and improvements. The benefits derived in this connection can not be over-emphasized, since the local companies could not keep in touch with the eastern financial situation and could not go into those markets and borrow money. Instead, they would be forced to depend upon local capital, limited in amount and obtainable only at high interest rates.

The Oklahoma Gas and Electric Company effects a very material saving in officers' salaries by reason of its arrangement with the Byllesby Engineering and Management Corporation. Only two of its officers receive any salary from the local company. The remainder are paid by the Byllesby Engineering and Management Corporation and for their services no additional charge is made. Were it not for this arrangement the local companies would have to employ and pay the salaries of at least three additional officers, including a president and such an expense item would more than equal the nominal charge paid the Byllesby Engineering and Management Corporation.

Such expenses have been allowed by other commissions in the following cases:

In the case of *In re West Virginia Gas Co.*, P. U. R. 1918-C, p. 543, the West Virginia Public Service Commission allowed a substantial sum for supervision by the management corporation.

In *In re Birmingham v. Southern Bell Telephone & Telegraph Co.*, P. U. R. 1919-B, p. 791, the Alabama Public Service Commission held that 4½ per cent payment to the American Telephone & Telegraph Company for certain services, including telephone instruments and supplies, the right to use all patented appliances, consulting engineering services, general accounting services, general legal services, financial assistance and general administrative service and advice was a reasonable charge against the operating expenses of the local telephone company. With reference to this contract, the Commission at page 797 says:

"The respondent company is operating under a license contract originally granted by the American Bell Telephone Company, under which this company receives (1) the telephone instruments, transmitters, and receivers used by it in its telephone system, with the surplus supplied to cover emergencies, and the right to have the instrument replaced as they become out of repair or as improved instruments are developed; (2) the right to use all patented appliances which are involved in the transaction of its business, with all of the improvements that are made upon them from time to time, the existing patents at the time of this hearing being some 2,000 in number; (3) consulting engineering service covering all matters of plant and operation furnished by the general staff of the American Telephone and Telegraph Company, which saves the respondent company any engineering expenses, except that pertaining to the direct work of operation and construction; (4) general accounting services of like character; (5) general legal services of like character; (6) financial assistance to enable the

company to secure, at low rates, the new money that is constantly required in order to provide for the additions to its plant, which necessarily must be made in maintaining its service and meeting its public requirements; (7) general administrative service and advice."

"It might be well to state that, when this contract was originally entered into, not an item of equipment or apparatus that is in use today, and is standard today, was known or was available for use except the possible use of elementary things like poles, crossarms, and insulators."

"The development of the general staff of the American Telephone & Telegraph Company has so grown, and its functions so broadened, that at the present time it renders available to the respondent company the entire telephone experience of the world, with everything that is of general value in the telephone art and sciences, whether covered by patents or not. It is plain to the Commission that it is absolutely necessary for the respondent company to keep in touch at all times with all improvements in the telephone arts and sciences; and whether it does this through contract with the American Telephone & Telegraph Company or through its own efforts, the Commission is not concerned. The question with which the Commission is concerned is whether or not the respondent company secures these services for a reasonable sum; whether a reasonably practical man, in operating the respondent's plant, would incur this expense."

"The Commission is naturally interested as to whether the respondent company could get this service cheaper in some other way, either by furnishing it itself, or by some other source. If it is obvious that much of this service could not be obtained any other way except in a central organization. It would be impossible to render to every-

one all of the patented inventions which so largely make up the improvements in the arts of telephony. If each telephone company attempted to organize a general staff, it appears to the Commission that each company would absolutely retain its own inventions, and no company could acquire the right to use everything that will aid in the most efficient and economical service. Moreover, the expense of such organization, it occurs to the Commission, would be prohibitive, unless it were distributed over a large system."

"It is probably proper for the Commission to go further as to the value of this service to the respondent company, and, in doing so, recalls that the testimony of respondent company showed considerable amounts in the saving in the construction work both throughout the state and Birmingham proper."

"The fact, if it be a fact, that this arrangement or contract is also a desirable contract from the standpoint of the American Telephone and Telegraph Company does not, to the mind of this Commission, affect the situation whatsoever. If, for instance, the respondent company rented its instruments from someone else, the person who rented them to the company would expect a profit and would certainly be entitled to one. Sound business transactions benefit all parties to them."

"The Commission will further add in this connection that in a contract recently entered into between the Federal Government, through Postmaster General (Mr. Burleson) and the respondent company, that the  $4\frac{1}{2}$  per cent contract herein involved was approved."

*In In re Coos Telephone Company*, P. U. R. 1918-F, p. 593, the New Hampshire Public Service Commission held, in the fourth and fifth paragraphs of the syllabus, as follows:

"4. A charge by a parent company for keeping the books of a subsidiary telephone company of 46/100 of 1 per cent of the latter's gross income is not exorbitant, it appearing that such service includes the making of the annual reports to the Interstate Commerce Commission and to the Public Service Commissions of New Hampshire, Vermont and Maine, and includes the furnishing of books and office supplies."

"5. A charge by a parent company for supervision of 1 per cent of the gross income of a subsidiary telephone company, is not exorbitant, where such service includes the service of the treasurer, auditor, engineers, and employees under those officials, and it also appears that the parent company advances money to finance extensions, additions, and betterments."

In *Public Service Commission v. Pacific Telephone & Telegraph Company*, No. 4747, decided February 13, 1919, in speaking of the usual 4½ per cent contract made between the Bell System and its constituent companies, the Washington Commission said:

"At a large expense this Commission, several years ago, made a thorough investigation of this contract, but at that time entered no order concerning it. We have reached the conclusion that it is a beneficial arrangement conducive to telephonic development and service. A number of other state commissioners have analyzed and discussed it and in the main have supported it."

In *In re San Diego Gas & Electric Company*, P. U. R. 1917-A, p. 930, the California Railroad Commission made an allowance of two per cent of the gross revenues for supervision by H. M. Byllesby & Company.

Similar charges have been sustained in two late decisions, one being *In re Pacific Tel. & Tel. Co.*, decided February 21st, 1922, by the Oregon Public Service Commission, from which we quote as follows:

"The 4½ per. cent licensee revenue paid to The American Company was constantly referred to as exacted from the patrons of the company and paid to the parent company for no consideration whatever, notwithstanding that it was well known to counsel for petitioners that less than one-half of this percentage was allowed by the Commission, and that this allowance was based on the actual cost of service rendered by The American Company. Washington, Idaho, Arizona, Colorado, Utah, Wisconsin, Michigan, Missouri, Arkansas, Louisiana, Alabama, Georgia, South Carolina, Virginia, West Virginia, Ohio, Illinois, Pennsylvania, Maryland, District of Columbia, New Jersey and the Dominion of Canada have allowed the 4½ per cent or an equivalent. Oregon, California, Indiana, Kansas, Oklahoma and Vermont allow it in part. None reject it."

"The Western Electric Contract has been accepted by every state which has passed on it. In their brief, petitioners abandon the claim that Western Electric prices are higher than those of other supply houses, but maintain that they ought to be much lower, and that all relief should be denied the company until the operations of the Western Electric which cover the entire nation, have been investigated in every detail and its rate of net earnings ascertained in order to determine how much lower it might be compelled to sell. It is of no consequence to counsel that such an investigation would cost a half million dollars and would require two years or more time."

And the other being *In re Chesapeake and Potomac Telephone Company*, decided by the District of Columbia Public Utilities Commission, February 15th, 1922, from which we quote as follows:

"In common with other companies throughout the country comprising the so-called Bell System the Chesapeake and Potomac Telephone Company has a contract with the Western Electric Company for the furnishing of supplies needed in its service; not only of apparatus and equipment manufactured by the Western Electric Company, but of all classes of materials and supplies from stationery to automobiles. The contract, however, does not obligate the Chesapeake and Potomac Telephone Company to purchase any of its supplies from the Western Electric Company; it may obtain them in the open market by direct purchase from other dealers or manufacturers. Witnesses for the company testified that many purchases are made in the local market under competitive bidding, and if the prices are lower than those quoted by the Western Electric Company the order is placed with the lower bidder."

"It appears from the testimony submitted by the witnesses that the prices of materials manufactured by the Western Electric Company are generally lower to the associated Bell companies than to others, and that many materials and supplies not manufactured by the Western Electric Company can be obtained at better prices through the Western Electric Company due to the purchase in large quantities by the latter company of standard articles used in common by the Bell companies \* \* \*"

"From the evidence thus presented the Commission is of the opinion that the contractual relations between the Chesapeake and Potomac Telephone Company and the Western Electric Company and the manner in which purchases of materials,

supplies and equipment are made result in a considerable saving to the local company."

From the undisputed evidence in this case, and the foregoing authorities, we believe that it is apparent that the supervision charges are thoroughly justified and will be sustained by this court as a proper operating expense of the appellant utilities.

In the case of *Consolidated Gas Company v. Newton*, 267 Fed. 231, it appears that the New York Commission disallowed the charge for certain automobiles without offering any evidence to show that such a charge was not proper. The court in considering this disallowance very properly struck it out, saying that if the charge was unjust the Commission should have offered evidence showing that it was, and having failed in this, as has the Commission in the instant case, the item should be allowed to stand.

#### **Original cost of utility's property in Oklahoma City division.**

The Commission finds the original cost of the property, as shown by their engineer's report, as of August 1, 1921, after deducting property not now being used, to be \$1,819,696.00 (Pr. Tr. 110). The Commission then says certain items proper to be included but uncertain as to amount are included in these figures, such as engineering, superintendence, injuries during construction, legal expenses, interest, during construction, etc., amounting to slightly in excess of twenty per cent of the value of the property. Here is a clear recognition on the part of the Commission that these items are proper

elements to be included in arriving at the value of appellants' property used and useful in serving the public.

If the original cost theory were the proper method of valuation there should be added to the \$1,819,696, the original cost of the property on August 1, 1921, the sum of \$30,850.00 additions and betterments made subsequent to that date, giving a total original cost value of the property as of December 31, 1921, \$1,850,546.00. To this should be added twenty per cent going concern value and \$150,000.00 for working capital. This gives us a total original cost value, plus going concern and working capital, of \$2,370,655.00, a figure closely approaching the reproduction new or replacement value as shown by appellants' evidence (Pr. Tr. 276). The Commission also adopted historical cost as a rate base in valuing the Muskogee (Pr. Tr. 171) Enid and El Reno distributing plants (Pr. Tr. 121).

### **Erroneous and Unlawful Deductions.**

The Commission after finding the original cost of the appellants' distributing plant in the Oklahoma City Division was \$1,819,696.00 deducted the sum of \$481,365.72, and arrived at a rate base of \$1,280,660.00. This deduction is wholly unauthorized both of the facts as shown by the evidence in the record and also under the law. The theory upon which the Commission made the deduction was that the company was entitled to thirteen (13%) per cent per annum for depreciation and return upon the value of its property, and further found that

for seven years it had collected \$256,808.64, in excess of thirteen (13%) per cent upon an assumed valuation of ~~\$1,251,550.46~~ <sup>1,335,330.61</sup>. The Commission also found that as a part of its operating expenses for the years 1915-1921 inclusive appellant had paid to a management corporation the sum of \$204,668.67, which added to the alleged excessive earnings made a total of \$461,477.31. It then calculated that the company had charged during the same period of time \$481,365.72 for depreciation, which amount it deducted from the original cost of the property to give it the rate base of \$1,280,000.00. It made a further deduction from the rate base and later adopted as the rate base the sum of \$1,206,625.00 (Pr. Tr. 162).

The finding of the Commission as to the excessive returns is wholly unsupported by the evidence. In order to determine whether a utility has received an adequate or excessive return upon its property the valuation of the property must first be determined. Under the decisions which we have heretofore quoted it is evident that the company was entitled each year to a return upon the value of its property, used and useful in the public service, at the time it was being used. The Commission erroneously estimates that the company was entitled during the seven years enumerated to a return upon its average investment or historical cost which it found to be ~~\$1,259,550.46~~ <sup>1,335,330.61</sup>. Such a rate base has been declared by this court to be erroneous. *Wilcox v. Consolidated Gas Co.*, *supra*, that there is no evidence in this record showing the value of appellants' property prior to March, 1920, and certainly none showing that it was of the value as

found by the Commission. The only theory upon which it could have found such a value was that of original or historical cost, which as we have heretofore shown, has been declared to be erroneous. The evidence in this record shows that in March, 1920, the value of appellants' property in Oklahoma City excluding going value, working capital, and cost of money, was as follows:

Reproduction Cost New .....	\$3,152,905.00
Present value, .....	2,296,901.00
Reproduction Cost (5 year average prices) .....	2,539,793.00
Reproduction Cost Less Depreciation (5 year average) .....	1,853,286.00
(Pr. Tr. 274)	

The evidence in the record, also shows that on Aug. 1, 1921, the value of appellants' gas distributing plant in the Oklahoma City Division according to the Commission's own engineer was \$2,693,492.00 exclusive of going value, working capital, and cost of money. It also shows that the value on December 21, 1921, was in excess of two million dollars, and although the record does not show specifically the value of appellant's property for the preceeding years it is a well and generally known fact that material and labor prices in December, 1921, were lower than they were during the war. The commission order recites this fact (Pr. Tr. 155). Every one knows that during the war material and labor of all kinds were high. It will therefore readily appear that the Commission did not base its conclusions as to excessive earnings upon the value of appellants' property as shown by the record.

**There is no authority in law for deducting past earnings, but on the contrary the decisions hold that past earnings cannot be deducted.**

Still insisting that as a question of fact there is no evidence in this record supporting the Commissions' finding that appellant had excessive earnings during the seven years enumerated, we say that even if there were excessive earnings, as a matter of law the Commission was not authorized to deduct them from the value of appellants' property in determining a basis for rate-making.

In the case of *Galveston Electric Company v. City of Galveston*, 272 Fed. 147, Judge Hutcheson, United States District Judge for the Southern District of Texas, said:

"In short, the real question here is the value of the plant in operation, and this value should be the same for rate-making purposes whether its past history has been successful or unsuccessful."

At another place in the opinion he said:

"\* \* \* Nor in a case of valuation where the cost of the plant and its historical development is determined does the court add anything to its capitalization for rate-making purposes for the unsuccessful years, nor deduct anything for its successful ones."

Upon appeal of the above case this court, opinion filed April 10th, 1922, held that it was <sup>the</sup> proper to deduct an accumulated surplus from the base value.

In the case of *Havre De Grace & Perryville Bridge Co. v. Towers*, (Md.) 103 Atl. 319, it appears that the

owners of a toll bridge under public regulation had purchased the bridge for a small sum and had made profits largely in excess of the cost of the bridge, and in the 13th syllabus of that case the Court of Appeals of Maryland said :

"It is improper for the Public Service Commission to subtract from the actual value of the bridge on account of 'equities in the public,' for the purpose of fixing reasonable toll rates."

In the course of the opinion the court said :

"The real point to be ascertained was not what it had cost either the railroad company to build the bridge, or the incorporators of the bridge company to acquire it, but what was its fair value at the time of the investigation by the Commission."

"We have given consideration to the circumstances therein set up, and have construed them as creating substantial equities in the public with respect to the rates of toll proper to be charged over the bridge in question."

"Just what these supposed substantial equities were the opinion of the commission throws no light upon, but having them in mind, and after the deductions already mentioned, an allowance, and apparently a substantial allowance, was made for these equities, with the result that the value of the bridge was decreased \$100,000, and its value fixed at \$250,000, and the tolls attempted to be adjusted so as to yield to the stockholders of the bridge company a proper return upon such valuation."

"By a similar process of reasoning it would have been entirely possible to have reached any valuation which might have been desired. This is not intended as in any way reflecting upon the *bona fides* of the intent of those constituting The Public Service Commission, either in fixing the fair value of the bridge, or the rates promulgated by the Commission's order; but it is important as showing that

the method adopted and result obtained was unreasonable. It is not the function of this court either to fix the valuation of the property, or the reasonableness of the rates. Its sole power and duty is to examine those rates in the light of the method by which they were obtained, and say whether in our judgment the same were reasonable or unreasonable, and after careful consideration we are bound to hold the action of the Commission unreasonable and the decree appealed from must therefore be reversed."

In the case before the court if appellants had made the earnings alleged it had paid them out to its stockholders. Pertinent to a similar situation the Supreme Court of Nebraska in the case of *Lincoln Traction Co. v. City of Lincoln*, (Neb.) 171 N. W. 192, said:

"In determining the sufficiency of present rates, it would be proper to consider the dividend that had been declared in the recent past under ordinary conditions, but, as already stated, the distribution of these dividends among stockholders would not throw any light upon the earning power of the property. If the dividends paid to the various stockholders, were more than a fair return upon the property, or in excess of the net earnings of the company, it would devolve upon the company to make good the deficiency, or run the risk of a receivership, in case it was impossible to render such service as is due the public and is required by the commission. But, if owing to changed conditions, the net earnings of the company, properly managed, are not a fair return upon the investment, the rates should be increased without driving the company to remedies so doubtful as suits to recover dividends long ago declared and paid."

Further on the court said:

"Money raised to pay for depreciation should not be considered as capital upon which a return is to be made to stockholders as dividends in the future, but 'that it was right to raise more money to pay for depreciation than was actually disbursed for the particular year there can be no doubt, for a reserve is necessary in any business of this kind, and so it might accumulate; but to raise more than money enough for the purpose, and place the balance to the credit of capital upon which to pay dividends, cannot be proper treatment.' *Louisiana Railroad Commission v. Cumberland Telephone & Telegraph Co.*, 212 U. S. 414, 29 Sup. Ct. 357, 53 L. Ed. 577. But when dividends are fairly earned under the rates allowed, and are declared, such dividends become the property of the stockholder, and, if used to make proper additions to the property, such additions should be considered in adjusting rates."

This court in the case of *Reagan v. Farmers Loan & Trust Co.*, 154 U. S. 362, 410 in considering the validity of an order of the Railroad Commission of the State of Texas fixing railroad rates, says:

"If the state were to seek to acquire the title to these roads, under its power of eminent domain, is there any doubt that constitutional provisions would require the payment to the corporation of just compensation, that compensation being the value of the property as it stood in the markets of the world, and not as prescribed by an act of the legislature. Is it any less a departure from the obligations of justice to seek to take not the title but the use for the public benefits at less than its market value."

In *Grafton County Electric Light & Power Co. v. State*, 94 Atl. 192, the Supreme Court of New Hampshire said in the 4th syllabus:

"The public had no interest in the surplus earned by a public utility corporation which prevents the corporation from using it or disposing of it the same as any other property of the corporation."

In the opinion the court said:

"It is urged by counsel as a further reason for denying the petition that the public has some vague interest in the surplus which has been accumulated, so that it may deny to the owners the full enjoyment thereof. The authorities are clear that the surplus is the property of the companies. Opinion of the Justices, 66 N. H. 629, 33 Atl. 1076; *Fall River Gas Works v. Commissioners*, 214 Mass. 529; 102 N. E. 475. Since it is their property, it cannot be taken from them directly, nor can they be deprived of it indirectly, either in whole or in part, by denying to its owners the right to use it as they could use their other property."

In the case of *Fall River Gas Works Co. v. Board of Commissioners* (Mass.), 102 N. E. 475, the Supreme Judicial Court of Massachusetts said:

"When the corporation has performed all its duties and by its fortunate situation, good management, or any lawful conduct has remaining a surplus of earnings, it has the right to distribute this surplus among its stockholders in dividends. As between the public and the corporation the earnings belong to the corporation. In performing its full duty to the public and others it has done what it was chartered to do, and is entitled to the profits of the business for which it was chartered."

The very last expression of this court removes any doubt on the question, if there has ever been any room for doubt, for in the case of *Consolidated Gas Co. v.*

*Newton*, 66 L. Ed. 305, (not yet officially reported) it was said:

"Since 1907 the gas company has been subject to supervision by a Commission empowered to prohibit unreasonable rates and the presumption is that any profits from its business were lawfully acquired. *Municipal Gas Company v. Public Service Commission*, 225 N. Y. 89, 99. Mere past success could not support a demand that it continue to operate indefinitely at a loss. The public has no such right in respect of private property although dedicated to public use. When it became clear that the prescribed rate had yielded no fair return for more than a year and that this condition would almost certainly continue for many months the company was clearly entitled to relief."

Since 1913 appellant herein has been subject to the jurisdiction of the Corporation Commission, which fixes its rates, and the presumption is that the rates so fixed were reasonable, so the public would not have any interest in a surplus, if in fact any had been built up by the company under rates prescribed by the Commission. See also *Chicago Rys. Co. et al. v. St. Louis Commerce Com.*, 277 Fed. 970.

**Division of revenues prior to July 1st, 1921, was contractual.**

In addition to the above there is another very potent reason why the Commission was unauthorized to deduct from the appellants' valuation its surplus, if any had been accumulated. It will be remembered, as shown by this record, that prior to July 1st, 1921, appellants were op-

erating under rates prescribed by the Corporation Commission for the Oklahoma Natural Gas Company and appellants in furnishing gas to consumers in the cities and towns served by appellants. The service rendered was joint and the rate fixed was joint, and the presumption is that the rate allowed by the Commission and charged the public was a reasonable rate for the joint service so rendered. The revenue was divided according to the percentage contracts and whatever was received by the appellants in this case they received by virtue of their contracts with the Oklahoma Natural Gas Company, which were in full force and effect until abrogated by the Commission. Indeed one of the principal reasons the Commission gave for abrogating the contracts was the difficulty in fixing a rate that would be fair to both under them, which seems to us to clearly recognize the fact that appellants were entitled to a division of the revenues according to the terms of the contracts, so long as they were in existence.

### **Unaccounted for Gas.**

Under the percentage or divisional contracts between the Oklahoma Natural Gas Company and appellants that were in existence prior to July 1st, 1921, and which were abrogated by order of the Corporation Commission, the Oklahoma Natural Gas Company bore all the loss due to unaccounted for gas, the same being denominated by the Commission as leakage. In other words, appellants in accounting to the Oklahoma Natural Gas Company,

paid the latter company a certain percentage of its collections from consumers.

The evidence introduced at the hearing on the application for a temporary injunction in the United States District Court, disclosed that the unaccounted for gas in the entire system operated by the Oklahoma Gas and Electric Company and the Muskogee Gas and Electric Company for the year beginning December 1, 1920, and ending November 30th, 1921, was approximately twenty per cent (20%) of the volume of gas delivered to appellants at the city gates, and that this percentage is not above the average for other distributing gas systems within the State of Oklahoma, and is much less than exists in many of the systems. A large amount of this unaccounted for gas is due to leakage in the customers' pipes over which the company has no control, since the customer installs and owns the pipes from the curb to the meter. There is also leakage in the company's pipes, but as a large proportion of these pipes are under paved streets and the expense incident to taking up the paving and correcting the leakage would be disproportionate to the benefits and not consistent with good business management. See affidavits of William H. Crutcher, Printed Transcript 271 and 272, and 290 and 291.

It is a fact well known to science that in the very best artificial, as well as natural gas distributing plants, a considerable amount of leakage exists. It is our contention that where it is shown, as in this case, that leakage is a constant factor, appellants can not be penalized any more for it than for wear and tear on the physical

elements of its property. Especially is this true in view of the fact that the Oklahoma Corporation Commission has not heretofore fixed a standard of leakage and allowed appellants earnings sufficient to enable them to reduce leakage to the standard fixed in the Commission's orders herein (Pr. Tr. 353). It did however, in 1917, in the case of *Re. Osage and Oklahoma Co. et al.* Public Utility Reports, 1917 D 426, allow 20% for leakage in one of the Oklahoma National Gas Co.'s distributing systems. See also *Re. Pawhuska Oil and Gas Co.* Public Utility Reports 1917 D. 947.

It is also a well known fact that leakage is less in artificial gas distributing plants than in natural gas distributing plants, owing to the fact that it is greater under high pressure, which is necessary in deliveries of gas in natural gas systems. In *Kings County Light Co. v. Newton*, 268 Fed. 143 (affirmed by this court March 6, 1922) the court allowed fifteen per cent (15%) for leakage as a reasonable amount in an artificial gas distributing plant.

The court of Industrial Relations of Kansas undertook to require the gas companies to correct their leakage, without giving them an earning with which to do so, and the order of the Commission fixing the rates on a basis of the leakage being corrected, was enjoined by the United States Court, Judge Booth of Minnesota sitting, in the case of *Landon, Receiver of the Kansas Natural Gas Co. v. Court of Industrial Relations of Kansas*, 269 Fed. 433. In the 9th, 13th, 14th and 16th syllabi of that case it is said:

"9. The 80-cent rate, which the Kansas City Court of Industrial Relations permitted companies distributing natural gas to charge, held unreasonable unjust, and confiscatory, where the evidence showed that the rate would not produce a fair return on the valuation found by the Commission, without any allowance for the expense of bringing the distributing plants to a new standard of efficiency required by the same order, and did not show that the rate would be reasonable after the plants were brought to the new standard."

"13. A gas company, which is ordered to bring its plant to an increased standard of efficiency cannot be required to take the funds for that purpose from its accumulated depreciation reserve, which would be in effect, confiscatory of the property."

"14. The funds necessary for repairs to bring a gas distributing plant to the new standard of efficiency required by the court of Industrial Relations should not be raised by borrowing, which would add to the capital valuation of the plant, on which the company would be entitled to reasonable returns during its future operations."

"16. Since the reduction of leakage in a natural gas distributing plant is a matter of conservation in the interest of the consumers, who will be required to use other fuels when the supply of natural gas is exhausted, it is not unreasonable to include in the rate they must pay a charge for bringing the plants to a higher standard of efficiency, and thereby reducing the leakage, so long as natural gas under such rates is still cheaper than any other available fuel."

In the opinion the court said:

"With what funds shall the distributing companies place their plants upon the standard of leakage required by the order of August 18, 1920; such funds cannot be derived from an accumulated de-

preciation reserve, for the reason that the evidence shows that there is no such fund in actual existence; nor if there were, would it be proper to take the funds accumulated for that purpose to make the repairs necessary. Such a diversion of funds from the depreciation reserve would be in effect confiscatory of the property of the distributing companies. The required funds cannot be taken from net earnings, for, in case of several of the applicants, the net earnings are not sufficient at present for the purpose, even eliminating all questions of return upon valuation."

"Nor is it reasonable, in my opinion, to demand that the funds to make the required repairs be raised by borrowed capital. Such funds so raised would necessarily have to go into the capital account. But the evidence shows that practically 90 per cent of the work necessary to be done to bring the distributing plants up to the required standard consists in repairs, and not in new construction. There is no justification, therefore, for putting such expense into capital account, thereby making the public pay a rate indefinitely on such addition to the capital account."

"Of course, if any plant was deficiently constructed in the first place to the extent of that deficiency the company must look to itself for financial help. If during the past seven years the distributing companies have not kept their plants up to the standard of leakage tacitly authorized, and if earnings which might have been devoted to such purpose have been diverted, the distributing companies should be penalized to the proper extent therefor. And if money specifically provided to the distributing companies for the purpose of reducing leakage has been by them diverted in whole or in part to other purposes, the distributing companies should be penalized therefor to the proper extent. But to go far beyond this, and throw upon the distributing companies the whole burden of bringing their plants

up to the new standard ordered, reasonable and proper though that standard be, is in my judgment 'unreasonable' in view of the unusual, but vital facts of the situation, within the meaning of that term as used in Section 31, Chapter 238, Laws Kan. 1911."

"It will doubtless be said that, if the foregoing views are correct, they point to the conclusion that the new standard of leakage can properly be attained only by some increase in the present rate. Be it so. Such conclusion is in my judgment both just and reasonable. As has been already said, the new standard of leakage is in the interest of conservation of gas—a matter in which the consumers are vitally interested and it is not unreasonable that they should pay in part at least the cost of effecting the change. It may not be amiss to repeat what was said two years ago at the time of the entry of the 80-cent order."

"It may be said that this increase of rates is really making the public pay the expence of reducing the leakage. In a way this is true, and such a course, under some circumstances, might be open to objections; but such is not the case here. For some years the public has been receiving service from the distributing companies at a rate too low to give these companies a fair, reasonable return, with the natural result that repairs and replacements have not received sufficient attention. Secondly, the rates now established are still much below what the natural gas is intrinsically worth, when compared with other fuel which might be substituted."

"My conclusion on the present application is that that portion of the order of August 18, 1920, of the Court of Industrial Relations which denies the applications of the distributing companies to increase the present rate, and fixes the present 80-cent rate as reasonable, just, and fair is unreasonable and confiscatory, and the enforcement of the same should be enjoined."

It has not been shown that the distributing systems of the appellants were not constructed and maintained in accordance with good practice, considering the nature and developement of the busines, or in accordance with rules previously laid down by the Commission. To now compute and allow a schedule or rates based upon losses very much less than the actual losses imposes an unreasonable burden upon the appellants as the leakage can be reduced to the basis which the Commission allowed only through the expenditure of considerable money, the amount of which has not been determined, considered or allowed by the Commission in relation to the saving in gas which such expenditure might produce.

The Commission, in estimating the volume of gas necessary to be purchased by appellants at the city gates, only allowed ten per cent (10%) for leakage (Printed Trans. 168). In other wors, although it found that appellants would have to buy twenty per cent (20%) more gas than they could sell to consumers, it estimated in arriving at the company's expenses for the ensuing year that it would only have to buy ten per cent (10%) more, thereby arbitrarily greatly reducing the amount of this item—the cost of gas—in its operating expenses. Concretely, it estimated that the cost of gas to the Oklahoma City distributing system would be \$878,847.00 (Printed Trans. 168), while as a matter of fact, the cost of gas, based upon the same volume consumed in 1921, under the gate rate fixed by the Commission would be \$946,227.00.

**Commission's erroneous calculations as to operating expenses.**

In the Commission's order under "Computation" (Printed Trans. 167) it attempts to set forth what the income and outlay of the company will be for 1922, based upon the amount of gas purchased and sold, operating expenses, taxes, etc., for 1921, and finds that the net revenue will give an adequate return. As heretofore shown, these calculations are entirely erroneous because the amount of return to which appellants are entitled is based upon a wholly erroneous hypothesis as to valuation. Its methods are obviously unfair. There is no real dispute in this record as to what the operating expenses for 1921 were for it is shown conclusively and not denied, that for the year ending September 30, 1921, they were exclusive of cost of gas, \$235,971.00; for the year ending October 31, 1921, they were \$232,291.00, and for the year ending November 30, 1921, they were \$235,370.00 (Printed Trans. 187). In these amounts taxes are properly included as an operating expense. The Commission in its order attempts to say that the operating expenses for the year ending October 31, 1921, were \$170,595.86, but it later appears, that in arriving at this sum it excluded taxes ~~and the amount paid the Byllesby Management and Engineering Corporation~~, which obviously are operating expenses and make up the difference (Printed Trans. 168) and as heretofore stated, it also erroneously estimates that the gas purchased costs the appellenats in the Oklahoma City division, on the basis of last year, the

*und*

sum of \$878,847.00, when in fact it actually cost the company for the year ending October 31, 1922 the sum of \$946,227.00. By eliminating these items from appellants operating expenses, it attempts to find more than an adequate return upon a valuation of \$1,205,625.00. This valuation, being based upon original cost with very large arbitrary and erroneous deductions, is so arbitrary and unfair as to require no further comment.

The only proper and fair way to arrive at a fair rate is to first estimate the expenditures appellant will be required to make, including the cost of gas, taxes and other operating expenses, based upon the previous year, plus five per cent (5%) for depreciation and eight per cent (8%) for return upon the present fair value of appellants' distributing plants, and then to fix a rate which will produce that amount of revenue, based upon the assumption that the company will sell as much gas in 1922 as it would in 1921.

However, this last assumption, according to the legitimate conclusions to be drawn from the record, we believe is incorrect. It is not probable that appellants will sell as much gas in 1922 as they did in 1921. The evidence shows that it has already lost practically all of its sales of industrial gas. It also shows that appellants ~~sold less gas in 1921 than they did in 1920~~, and with the increased price necessary to be charged, the probabilities are that the consumption of gas will be still further restricted.

In conclusion it is respectfully submitted that the rates fixed by the Corporation Commission of the State of Oklahoma are confiscatory and in violation of the Fourteenth Amendment to the Constitution of the United States; that the United States Court for the Western District of Oklahoma erred in holding that appellants' bill was prematurely brought, and appellants now ask this court to grant them the relief to which they are entitled.

Respectfully submitted,

DENNIS T. FLYNN,  
JOHN H. ROEMER,  
ROBERT M. RAINEY,  
STREETER B. FLYNN.

**APPENDIX.****A.****Applicable Provisions of the Oklahoma Constitution.****Article 9, Sec. 18:**

The Commission shall have the power and authority and be charged with the duty of supervising, regulating and controlling all transportation and transmission companies doing business in this state, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies; and to that end the Commission shall, from time to time, prescribe and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications of traffic, and rules and regulations, and shall require them to establish and maintain all such public service, facilities, and conveniences as may be reasonable and just, which said rates, charges, classifications, rules, regulations, and requirements, the Commission may, from time to time, alter or amend. All rates, charges, classifications, rules and regulations adopted, or acted upon, by any such company, inconsistent with those prescribed by the Commission, within the scope of its authority, shall be unlawful and void. The Commission shall also have the right, at all times, to inspect the books and papers of all transportation and transmission companies doing business in this state, and to require from such companies, from time to time, special reports and

statements, under oath, concerning their business; it shall keep itself fully informed of the physical condition of all the railroads of the state, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules, and regulations as may be necessary to prevent unjust or unreasonable discrimination and extortion by any transportation or transmission company in favor of, or against any person, locality, community, connecting line, or kind of traffic in the matter of car service, train or boat schedule, efficiency or transportation, transmission, or otherwise, in connection with the public duties of such company. Before the Commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company or companies to be affected by such rate, charge, classification, order, rule, regulation, or requirement, shall first be given by the Commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses; and before said Commission shall make or prescribe any general order, rule, regulation, or requirement, not directed against any specific company or companies by name, the contemplated general order, rule,

regulation, or requirement shall first be published in substance, not less than once a week, for four consecutive weeks, in one or more of the newspapers of general circulation published in the county in which the capitol of this state may be located, together with notice of the time and place, when and where the Commission will hear any objections which may be urged by any person interested, against the proposed order, rule, regulation or requirement, and every such general order, rule, regulation or requirement, made by the Commission shall be published at length, for the time and in the manner above specified, before it shall go into effect, and shall also, so long as it remains in force, be published in each subsequent annual report of the Commission. The authority of the Commission (subject to review on appeal as hereinafter provided) to prescribe rates, charges, and classifications of traffic, for transportation and transmission companies, shall, subject to regulation by law, be paramount; but its authority to prescribe any other rules, regulations or requirements for corporations or other persons shall be subject to the superior authority of the Legislature to legislate thereon by general laws; provided, however, that nothing in this section shall impair the rights which have heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations or rates of charges to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town, or county, so far as such services may be wholly

within the limits of the city, town or county granting the franchise. Upon the request of the parties interested, it shall be the duty of the Commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between transportation or transmission companies and their patrons or employees.

Article 9, Sec. 19:

In all matters pertaining to the public visitation, regulation, or control of corporations, and within the jurisdiction of the Commission, it shall have the powers and authority of a court record, to administer oath, to compel the attendance of witnesses, and the production of papers, to punish for contempt any person guilty of disrespectful or disorderly conduct in the presence of the Commission while in session, and to enforce compliance with any of its lawful orders or requirements by adjudging, and by enforcing its own appropriate process, against the delinquent or offending party or company (after it shall have been first duly cited, proceeded against by due process of law before the Commission sitting as a court, and afforded opportunity to introduce evidence and to be heard, as well against the validity, justness, or reasonableness of the order or requirement alleged to have been violated, as against the liability of the company for the alleged violation), such fines or other penalties as may be prescribed or authorized by the Constitution or by-law. The Commission may be vested with such additional powers and charged with such other duties (not inconsistent with this Constitution) as may be prescribed by law, in connection with the visitation, regulation, or control of

corporations, or with the prescribing and enforcing of rates and charges to be observed in the conduct of any business where the state has the right to prescribe the rates charges in connection therewith, or with the assessment of the property of corporations, or the appraisalment of the subject of taxation, or with the investigation of their franchises, for taxation, or with the investigation of the subject of taxation, or with the investigation of the subject of taxation generally. Any corporation failing or refusing to obey any valid order or requirement of the Commission within a reasonable time, not less than ten days, as shall be fixed in the order, may be fined by the Commission (proceeding by due process of law as aforesaid) such sum, not exceeding five hundred dollars, as the Commission may deem proper, or such sum, in excess of five hundred dollars as may be prescribed or authorized by law; and each day's continuance of such failure or refusal, after due service upon such corporation of the order or requirement of the Commission shall be a separate offense; provided, that should the operation of such order or requirement be suspended, pending any appeal therefrom, the period of such suspension shall not be computed against the company in the matter of its liability to fines or penalties.

Article 9, Sec. 20:

From any action of the Commission prescribing rates, charges, or classifications or traffic, or affecting the train schedule of any transportation company, or requiring additional facilities, conveniences, or public service of any transportation or transmission company, or refusing to

approve a suspending bond, or requiring additional security thereon or an increase thereof, as hereinafter provided for, an appeal (subject to such reasonable limitations as to time, regulations as to procedure and provisions as to cost, as may be prescribed by law) may be taken by the corporation whose rates, charges, or classifications of traffic, schedule, facilities, conveniences, or service, are affected, or by any person deeming himself aggrieved by such action, or (if allowed by law) by the state. Until otherwise provided by law, such appeal shall be taken in the manner in which appeals may be taken to the Supreme Court from the District Courts, except that such an appeal be of right, and the Supreme Court may provide by rule for proceedings in the manner of appeals in any particular in which the existing rules of law are inapplicable. If such appeal be taken by the corporation whose rates, charges, or classifications of traffic, schedules, facilities, conveniences, or service are affected, the state shall be made the appellee; but in the other cases mentioned, the corporation so affected shall be made the appellee. The legislature may also, by general laws, provide for appeals from any other action of the Commission by the state, or by any person interested, irrespective of the amount involved. All appeals from the Commission shall be to the Supreme Court only, and in all appeals to which the state is a party, it shall be represented by the Attorney General or his legally appointed representative. No court of this state (except the Supreme Court, by way of appeals as herein authorized) shall have jurisdiction to review, correct, or annul any action of the Commission

within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the Commission in the performance of its official duties; provided, however, that the writs of mandamus and prohibition shall lie from the Supreme Court to the Commission in all cases where such writs, respectively, would lie to any inferior court or officer.

Article 9, Sec. 21:

Upon the granting of an appeal, a writ of supersedeas may be awarded by the Supreme Court, suspending the operation of the action appealed from until the final disposition of the appeal; but prior to the final reversal thereof by the Supreme Court, no action of the Commission prescribing or affecting the rates, charges, or classifications of traffic of any transportation or transmission company shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceeding resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by the Commission (or approved, on review, by the Supreme Court) payable to the state, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal. The Commission, upon the execution of such bond, shall forthwith require the appealing company, under penalty of the immediate enforcement (pending the appeal and notwithstanding any supersedeas), of the order

or requirement appealed from, to keep such accounts, and to make to the Commission, from time to time, such reports, verified by oath, as may, in the judgment of the Commission, suffice to show the amounts being charged or received by the company, pending the appeal, in excess of the charge allowed by the action of the Commission appealed from together with the names and addresses of the persons to whom such over charges will be refundable in case the charges made by the company, pending the appeal, be not sustained on such appeal; and the Commission shall also, from time to time, require such company, under like penalty, to give additional security on, or to increase the said suspending bond, whenever, in the opinion of the Commission, the same may be necessary to insure the prompt refunding of the overcharges aforesaid. Upon the final decision of such appeal, and amounts which the appealing company may have collected, pending the appeal, in excess of that authorized by such final decision, shall be promptly refunded by the company to the parties entitled thereto, in such manner and through such methods of distribution as may be prescribed by the Commission, or by law. All such appeals, affecting rates, charges or classifications of traffic, shall have precedence upon the docket of the Supreme Court, and shall be heard and disposed of promptly by the court, irrespective of its place of session, next after the *habeas corpus*, and state cases already on the docket of the court.

Article 9, Sec. 22 :

In no case of appeal from the Commission, shall any new or additional evidence be introduced in the Supreme

Court; but the chairman of the Commission, under the seal of the Commission, shall certify to the Supreme Court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal, together with such of the evidence introduced before, or considered by, the Commission as may be selected, specified and required to be certified, by any party in interest, as well as such other evidence, so introduced, or considered as the Commission may deem proper to certify. The Commission shall, whenever an appeal is taken therefrom, file with the record of the case, and as a part thereof, a written statement of the reasons upon which the action appealed from was based, and such statement shall be read and considered by the Supreme Court, upon disposing of the appeal. The Supreme Court shall have jurisdiction, on such appeal, to consider and determine the reasonableness and justness of the action of the Commission appealed from, as well as any other matter arising under such appeal; provided, however, that the action of the Commission appealed from shall be regarded as *prima facie* just, reasonable and correct; but the court may, when it deems necessary, in the interest of justice, remand to the Commission any case pending on appeal, and require the same to be further investigated by the Commission, and reported upon to the court (together with a certificate of such additional evidence as may be tendered before the Commission by any party in interest), before the appeal is finally decided.

Article 9, Sec. 23:

Whenever the court, upon appeal, shall reverse an

order of the Commission affecting the rates, charges, or the classifications of traffic of any transportation or transmission company, it shall, at the same time, substitute therefor such orders as, in its opinion, the Commission should have made at the time of entering the order appealed from; otherwise the reversal order shall not be valid. Such substitute order shall have the same force and effect (and none other) as if it had been entered by the Commission at the time the original order appealed from was entered. The right of the Commission to prescribe and enforce rates, charges, classification, rules and regulations affecting any or all actions of the Commission theretofore entered by it, and appealed from, but based upon circumstances or conditions different from those existing at the time the order appealed from was made, shall not be suspended or impaired by reason of the pendency of such appeal; but no order of the Commission, prescribing or altering such rates, charges, classifications, rules, or regulations, shall be retroactive.

Article 9, Sec. 24 :

The right of any person to institute and prosecute in the ordinary courts of justice any action, suit or motion, against any transportation or transmission company, for any claim or cause of action against such company, shall not be extinguished or impaired, by reason of any fine or other penalty which the Commission may impose, or be authorized to impose, upon such company because of its breach of any public duty, or because of its failure to comply with any order or requirement of the Commission; but, in no such proceeding by any person against

such corporation, nor in any collateral proceeding shall the reasonableness, justness, or validity of any rate, charge, classification of traffic, rule, regulation, or requirement, theretofore prescribed by the Commission, within the scope of its authority, and then in force, be questioned; provided, however, that no case based upon or involving any order of the Commission shall be heard or disposed of, against the objection of either party, so long as such order is suspended in its operation by an order of the Supreme Court as authorized by this constitution or by any law passed in pursuance thereof.

**APPENDIX.****B.**

**Act Approved March 25, 1913, Sess. L. 1913, p. 150.**

An act to extend the jurisdiction of the Corporation Commission over the rates, charges, services and practices of water, heat, light and power companies, and to give said Commission general supervision over such utilities, and declaring an emergency.

*Be it Enacted by the People of the State of Oklahoma:  
Definition of Terms—"Public Utilities."*

Section 1. The term "public utility," as used in this act, shall be taken to mean and include every corporation, association, company, individuals, their trustees, lessees, or receivers, successors or assigns, except cities, towns, or other bodies politic, that now or hereafter may own, operate, or manage any plant or equipment, or any part hereof, directly or indirectly, for public use, or may supply any commodity to be furnished to the public.

(a) For the conveyance of gas by pipe line.

(b) For the production, transmission, delivery or furnishing of heat or light with gas.

(c) For the production, transmission, delivery or furnishing electric current for light, heat or power.

(d) For the transportation, delivery or furnishing of water for domestic purposes or for power.

The term "Commission" shall be taken to mean Corporation Commission of Oklahoma.

*Commission's Jurisdiction Over Public Utilities.*

Section 2. The Commission shall have general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations, affecting their services, operation, and the management and conduct of their business; shall inquire into the management of the business thereof, and the method in which same is conducted. It shall have full visitorial and inquisitorial power to examine such public utilities, and keep informed as to their general conditions, their capitalization, rates, plants, equipments, apparatus, and other property owned, leased, controlled or operated, the value of same, the management, conduct, operation, practices and services; not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with the provisions of this act, and with the constitution and laws of this state, and with the orders of the Commission.

*Implied Powers of Commission—Contempt.*

Section 3. In addition to the powers enumerated, specified, mentioned or indicated in this act, the Commission shall have all additional implied and incidental powers which may be proper and necessary to carry out, perform and execute all powers herein enumerated, specified, mentioned, or indicated, and to punish as for contempt such corporation, association, company or individual, their trustees, lessees, receivers, successors and assigns, for the disobedience of its orders in the manner provided for punishment of transportation and transmission companies, by the constitution and laws of this state.

*Records of Public Utility Business.*

Section 4. In case of the owner or operator of any public utility is engaged in carrying on any other business in connection with the operation of such public utility, the Commission may require the cost of the operation and gross revenues of such joint business to be kept in such form and manner as may be prescribed by the Commission so that the cost of the operation and gross revenues of the public utility may be ascertained.

*Orders of Commission—Scope—Right of Appeal.*

Section 5. The Commission may, from time to time, adopt or promulgate, such orders, rules, regulations or requirements, relative to investigations, inspections, tests, audits, and valuations of the plant and properties and relative to inspection and tests of meters as in its judgment may be necessary and proper; provided, that under the provisions of this act, any public utility, corporation, association, company, individual, their trustees, lessees or receivers, successors or assigns, may appeal from any order or finding or judgment of the Corporation Commission as provided by law in cases tried and heard before said Commission of transportation and transmission companies.

*Emergency.*

Section 6. For the preservation of the public health, peace and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in force from and after its passage and approval.

**APPENDIX.****C.**

**Act Approved February 10, 1913, Sess. L. 1913, p. 10.**

An act conferring authority upon the Corporation Commission to adjust controversies between parties growing out of refunds for public service; to require all refunds to be turned over to the Commission; to determine the amount of refund and to whom due; and declaring an emergency.

*Be it Enacted by the People of the State of Oklahoma:  
Commission Vested With Power of Court of Record.*

Section 1. The Corporation Commission is hereby vested with the power of a court of record to determine: First, the amount of refund due in all cases where any public service corporation, person, or firm, as defined by the constitution, charges an amount or any service rendered by such public service corporation, person, or firm, in excess of the lawful rate in force at the time such charge was made, or may thereafter be declared to be the legal rate which should have been applied to the service rendered; and second, to whom the overcharge should be paid.

*Judgment—Collection.*

Section 2. Upon ascertaining the amount of overcharge due from any public service corporation, person or firm, the Corporation Commission shall have authority to render judgment against such public service

corporation, person or firm, for the amount of such overcharge that may have been collected from the public in violation of any legal rate, or order of the Commission, if necessary to insure the prompt payment of the same to the Commission. Such judgment shall be a lien upon the property of the public service corporation, person, or firm, and shall be collected in the same manner that fines and penalties imposed by the Corporation Commission are now authorized to be collected by law, and, when collected, shall be paid immediately by the Commission to the parties to whom it is due.

*Appealed Orders—Additional Judgment for Expenses of Commission.*

Section 3. In all cases where an order fixing rates to be charged by any public service corporation, person or firm, has been appealed from and a supersedeas issued, the Corporation Commission, in making all orders requiring a refund of overcharges during the time the rates or charges were suspended, shall require such public service corporation, person, or firm, to pay, in addition to such refund, all expenses incurred by the Corporation Commission in checking such refund, determining to whom the same belongs, and in delivering the same to the party lawfully entitled thereto.

*Right of Appeal.*

Section 4. Any party in interest shall have a right to appeal from any action of the Commission to determine the amount of refund due, or to whom such refund shall

be made, or from any order or judgment rendered by the Commission pertaining to the subject-matter set forth in any of the above sections of this act, in the same manner as appeals are now taken from the Corporation Commission to the Supreme Court.

*Unclaimed Refunds—Escheat to State.*

Section 5. All refunds not paid out by the Commission, or unclaimed, within two years from the time the money is received by the Commission shall be turned to the State Treasurer.

*Emergency.*

Section 6. For the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof it is necessary that this act take effect and be in full force from and after its passage and approval.

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# In the Supreme Court of the United States

October Term, 1922

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OKLAHOMA GAS & ELECTRIC COM-  
PANY, AND MUSKOGEE GAS &  
ELECTRIC,

*Appellants,*

vs.

CORPORATION COMMISSION OF THE  
STATE OF OKLAHOMA, CAMPBELL  
RUSSELL, ART L. WALKER, AND  
E. R. HUGHES, ETC., ET AL.,

*Appellees.*

No. 419.

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## BRIEF AND PRINTED ARGUMENT FOR APPELLEES.

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### PRELIMINARY STATEMENT.

The Oklahoma Gas & Electric Company and Muskogee Gas & Electric Company are substantially identical in interest. They operate, under local franchises, gas distributing systems, the former in Oklahoma City, El Reno, Enid and other towns,

and the latter in Muskogee. At the hearing before the Commission, the evidence of a general character which was submitted was taken as applying to both companies and all properties (Tr. 170 and 174). To avoid repetition, the discussion herein is based upon the order and facts as developed with respect to the Oklahoma City division properties of the former as fairly representative of the group.

Prior to July 1, 1921, appellants, who had procured and yet procure from the Oklahoma Natural Gas Company the gas supplied patrons in the cities served by them, had taken such gas and paid therefor under arrangements with the Oklahoma Natural Gas Company whereby the latter was compensated for the gas received by a division of the proceeds of collections from patrons of the former. The Oklahoma Natural Company sought to have this divisional arrangement terminated on the ground, among others, that thereunder it was compelled to bear the burden of the leakage or loss occurring in the local distributing plants of appellants resulting from the leaky condition in which such plants, over which it had no control and whose condition it could not remedy, had been permitted to fall. Appellants resisted this effort of the Okla-

homa Natural Company, first by an original action in the Oklahoma supreme court to prohibit the Corporation Commission from abrogating the arrangement, then by action in the United States district court, alleging the impairment of contract; writ of error from the refusal of relief by the district court having been prosecuted to this court, but abandoned. By Order 1886 of the Commission, which is in question in Cause No. 406, October Term, 1922, advanced for hearing here on the same day as instant case (the cases of both Oklahoma Natural Gas Company and the appellants herein having been also argued and submitted together in the district court), the divisional arrangement was ordered terminated and appellants were required to pay for gas at a flat rate based on measurements at the city border, this being termed the city gate rate. Appellant then applied to the Commission to be permitted to increase rates charged patrons, and in order to meet the immediate necessities of appellants, the Commission, by its Order 1889, fixed a temporary rate wherein the rate theretofore effective was increased 2 cents per thousand cubic feet (Tr. 26). The appellants appealed from this temporary order to the supreme court of Oklahoma and applied for super-

sedeas thereof (Tr. 26), setting forth facts claimed to show that the order was "confiscatory and takes appellants' property without due process of law, contrary to the Constitution of this State and the Constitution of the United States" (Tr. 27). Upon consideration of the application for supersedeas, the supreme court, as was within its power (Section 22, Article IX, Constitution of Oklahoma), on December 17, 1921, remanded the cause to the Commission for further investigation and report, the report to be made within fifteen days therefrom (Tr. 50-71).

The affairs of appellant had been under investigation for a period of practically fifteen months, but had not been completed at the time of the making of the July 1 order. However, at the time of the remand of the case to the Commission the evidence theretofore gathered was ready for submission and consideration, and a full hearing was had, and concluded on December 31, 1921. The history hereof is found in the order, commencing Trans. 51. After brief extensions for filing, the additional order was filed in the supreme court appeal on January 23, 1922 (Tr. 72), following which appellants renewed their application for supersedeas. The supreme court issued an order denying same, in which it said:

“Whereas, the application does not in any way or in any manner attack the finding and opinion of the Corporation Commission filed herein on January 23, 1922, and no evidence being offered to show that said finding and orders are unreasonable and unjust, such finding will be presumed to be correct, and nothing to the contrary being shown, it is therefore ordered, adjudged and decreed that said application for supersedeas, under the facts herein, and for the increased rate to be charged as in said application set forth, that said application be and the same is hereby denied.” (Tr. 72.)

Thereafter and on February 6, 1922, appellant filed its second supplemental bill of complaint in the Federal district court, setting up the making of the new order, the fact that it had applied to the supreme court for supersedeas, and had been denied, and renewing the prayer in its original bill for injunction (Tr. 76).

#### **THE QUESTION OF PREMATURITY.**

Appellees in the instant cause insert herein the argument of their brief in the Oklahoma Natural case, No. 406, October Term, 1922, with respect to prematurity, being identical and common to the two cases.

The district court, enlarged to three judges, by a majority, denied appellant's application for a tem-

porary injunction, holding the application to have been premature, upon the authority of *Prentis v. Atlantic Coast Line Railway*, 211 U. S. 210. While the merits were argued, the disposition of the case upon the preliminary question of prematurity dispensed with consideration thereof.

The refusal of relief at this stage is attacked by appellant in lengthy and reiterated arguments based upon the following dissimilarity of procedural circumstance existing in this as contrasted with the *Prentis* case, namely: In the *Prentis* case the railway company had not availed itself of the remedy of appeal offered by the Virginia constitution, whereas in this case the appellant has availed itself of that remedy, the appeal being now pending and the cause having been argued and submitted upon appeal, but remaining undetermined. In the *Prentis* case the order has not actually become effective at the stage at which the injunction was sought, whereas in this case the appellant, after making its appeal to the state supreme court, applied for a supersedeas of the order pending the appeal, which supersedeas was denied because of insufficiency of showing, as a consequence of which the order has become and will, until the appeal shall be decided, remain effective.

In urging these dissimilarities, appellant fails to observe that in event the supreme court of Oklahoma shall reverse the cause, it becomes its duty under the Constitution to make a substitute order which relates back to the date of the original order, and under which any deficiency in the original order may, and must, be remedied.

Appellant seizes upon the circumstance of the effectiveness of the order pending the appeal as a foundation for its argument that the principles of the Prentis case are not here applicable; claiming that the alleged confiscation of its property pending the appeal warrants its demand, at this intermediate stage and before the final legislative step is taken, for relief at the hands of the Federal courts. This, as favorably as possible, is a concise statement of appellant's position. The soundness of this position depends upon the correct understanding of the Prentis case. In the view of the appellees, the argument of appellant is one purely *ab inconvenienti*, having no sound base in logic and being rested upon purely superficial dissimilarities to which are connected and isolated three particular expressions found in the Prentis case.

Before proceeding to attempt an analysis of

the Prentis case, it should be stated, as is admitted by all parties, that the provisions of the Constitution of Virginia under consideration in the Prentis case were copied *verbatim* into the Constitution of Oklahoma, and were by the Act of March 25, 1913, of the Legislature of Oklahoma (Session Laws of Oklahoma, 1913, p. 150) made applicable to "public utilities," the statutory definition of which term embraces appellant's business. Both the majority and minority opinions in the Prentis case disclosed a perfect familiarity with the constitutional provisions in question and the relationship of the facts and circumstances there existing to such provisions. All that is said in the Prentis case would be precisely applicable in this case if the appellant had resorted to the Federal court before availing itself of the privilege of appeal "at the legislative stage."

The bills in the Prentis case were brought in the circuit court to enjoin the Corporation Commission "from publishing or taking any other steps to enforce a certain order fixing passenger rates," 211 U. S. 223. From the dissenting opinion it appears, page 235, that a restraining order had been entered enjoining the commission from further proceeding until a hearing for an injunction *pendente lite*. Spe-

cial appearance, objections to jurisdiction, and finally demurrers and pleas were entered and upon overruling of demurrers and pleas, the defendant declining to answer further, a final decree *pro confesso* was entered, 211 U. S. 235-6. The court, therefore, proceeded upon the assumption that the order was made confiscatory and infringed the XIV amendment and stated that the question was whether "in spite of its constitutional invalidity it was one which the United States courts are not at liberty to impune", 211 U. S. 223. There was a question (page 323) as to whether the appeals would be too late; and the order was that if the appeals were entertained and the orders of the commission affirmed by the state supreme court, the bills might be dismissed without prejudice and filed again. What the court actually did, therefore, was to hold: This action was premature. Despite the fact that on the record we are to assume that the order is confiscatory, it was without the proprieties and erroneous at this stage for the circuit court to have enjoined the Virginia Corporation Commission "from publishing or taking any other steps to enforce" the confiscatory order. The relief asked by the railway company was that the publication of the order be restrained and that it should not be en-

forced at any time. If the court had intended that it should not be enforced pending the appeal, it would surely have said so, knowing, as it did, that all steps, except the actual publication of the order, had been taken to make it effective and that such publication had been ordered. The order which this court made respecting the injunction had the necessary effect of permitting the publication and consequent taking effect of the order complained of, unless the state supreme court should exercise its authority to grant a writ of *supersedeas*; and this despite the fact that upon the record the enforcement of the order pending the appeal would lead to an *ad interim* confiscation. The judgment did not condition the renewal of the application for injunction upon how the state supreme court should act in respect of superseding the confiscatory order. What this court *did not do*, in the light of its knowledge as to the procedural steps defined by the Virginia Constitution, is as significant as what *it did do*.

But appellant affects to avoid this significance (p. 42, its brief), by asserting that this court "assumed that if the railways followed the procedure provided by the Constitution of the State, the rates would not be put into effect until they had been

finally affirmed, etc.”, i. e., assumed that the state supreme court would grant a *supersedeas* pending the appeal. If this court had indulged this assumption it could readily and would certainly in some manner, have indicated the fact. It well knew that the granting of the *supersedeas* rested in the discretion of the supreme court of Virginia, and that that discretion was to be exercised upon the quality of the showing made by the railway company as to its being entitled to have the order superseded. It must have known that the state supreme court would supersede or not defendant upon its view of the requirements of justice. This court, recognizing that the authority and correlative duty was in and upon the state court to reach *its own judgment*, not only will not be thought to have assumed the exercise of that judgment, but in fact did not condition the intervention of the Federal courts upon the eventuation of that judgment to the satisfaction of the railway company. The most this court can be thought to have “assumed” in the premises was that “the same historical body that is entrusted with the preservation of the most valuable historical rights” would honestly and fairly adjudge. And, of course, this court did not even seem to do the adjudging required of the State court at the juncture of an ap-

plication for *supersedeas*. Not only so, but to think this court "assumed" that the state supreme court would exercise its discretion to the satisfaction of the railway company is to coincidentally think this court would violate the rule of comity and "equitable propriety" which its opinion was at such pains to declare and observe.

But, it is argued, this court stated in the *Pren-tis* case opinion that "the appellees were not bound to wait for proceedings brought to enforce the rate and to punish them for departing from it" (page 228), and also stated in effect that the railroads should have desisted from resorting to the Federal court until it was absolutely certain that State officials "would try to establish and *enforce* an unconstitutional rule" (p. 229), and also stated that the question to be decided by the supreme court of the State is legislative, "whether a certain rule shall be made," whereas, it is argued that in this case the rule has been made.

Concretely—the first quotation from the opinion occurs just following the statement that "litigation cannot arise until the moment of legislation is past" (p. 228); and immediately following the quoted portion is the reason upon which it is based, viz., that

enforcing the rate *by punishing* departure from it, would render relief in the Federal courts ineffectual because the punishment is judicial and not enjoined. Moreover, if the railroads should desist to protect their rights by appeal to the United States supreme court after final judgment, they would come with the facts already found against them. But the argument that the "enforcement" referred to is applicable to that enforcement which occurs between the time of the making of the order in the commission and the determination of the appeal by the supreme court sitting in an appellate legislative capacity and speaking the last legislative word, is entirely negated by the subsequent portions of the paragraph. "The facts to be found" are not legislatively found until the final legislative authority finds them—the "moment of legislation" is not past until the supreme court acts. The question until that moment is past remains "whether a certain rule shall be made" for—"no rate is irrevocably fixed until the matter has been laid before the body having the last word." The railways were required to "make sure that the State in its final legislative action would not respect what they think their rights to be." The railroads were perfectly sure

and on the state of the record it was judicially ascertained that the order of the commission (which would unless suspended be effective until the "last word" spoken) did not respect their rights. But this was not sufficient, "a just recognition of the solicitude with which their rights have been guarded" by the Constitution of the State required that the railways should make sure as to the final legislative action. As the opinion points out (p. 231), it may be that the body having the last legislative word will establish a rate not open to complaint. Every presumption is in favor of the idea that that body would do justice, accustomed as it was and is to a nicer weighing of facts and more refined application of judicial principles.

Moreover, when in the quoted portion the opinion refers to establishing and enforcing and punishing the violation of an order it is perfectly clear that the order referred to is the final order. Otherwise the reiterated stress laid by the opinion upon the necessity for the passage of the legislative moment, the saying of the last legislative word, etc., is deprived of its obviously intended effect.

Academically it were interesting to discuss the nature of an unsuperseded order of the Commission

pending appellate action thereon. In a sense it is legislation. But it is of a tentative character. There is an analogy to an unsuperseded but appealed judgment by a court. Execution may issue upon it. This very case presents such an analogy. During the effectiveness of the restraining order a vast sum was collected by appellant beyond that permitted under the order of the Commission. When the District Court denied the interlocutory injunction that money was, strictly, returnable to patrons of appellant under the bond, for the disallowance of the interlocutory order *ipso facto* dissolved the restraining order. But tentatively and pending the decision of this Court, appellant retains this money, though it cannot continue to collect at the rate permitted by the restraining order.

This Court in its final action will determine the entire matter—and in the truest sense the matter is not determined at all until it shall have rendered its judgment. But equally the matter is meanwhile determined, for rights and conduct are being day by day governed by both the superseded and unsuperseded portions of the previous actions of the District Court. The point is that the power of this Court is sufficient to accomplish justice whatever its

judgment may be as to what justice requires. Equally is this true of the power of the Supreme Court of the State sitting as a legislative appellate body for (and the fundamental error into which appellant falls in its argument is omitting to consider this fact) if the State Supreme Court finds that the rate fixed by the Commission is unjust it is not only within its power but is its duty to substitute therefor rates which are just—*i. e.*, an order of its own—and by the express terms of the Constitution (both of Virginia and Oklahoma) this order relates back to the date of the original order. So, the utility could, and would be required to, collect at the substituted rate (*i. e.*, the difference between the amount actually collected under the old and the amount collectible under the substituted rate) for the commodity and service furnished pending the appeal. The accounting data is at hand to make this practical, being precisely the same as that upon which the return to patrons would be required to be made if the order had been superseded and then affirmed, and being of the same character as will be used if this Court affirms the order of the District Court, which would require the refund of excess collections made during the enforcement of the restraining

order. So, at the commencement hereof the argument of appellant was described as one *ab inconvenienti*. The sole question is who is to sustain the burden of inconvenience during the process of completing the legislative procedure—who is, pending the appeal, to have the use of the money difference between the rates found just by the Commission and the rates found just at the end of the appeal. It is submitted that that argument of deprivation of constitutional rights is unsound which is not based on firmer foundations than this. This Court, when it handed down the opinion in the Prentis case, was fully cognizant of the requirement to substitute such an order as the Commission should have made (p. 224) and must have reflected that the thing which the court did and the application on all it said respecting “final legislative action,” etc., neither would nor could result in real injury to the railways.

The deductions drawn from the language of the several parts of the opinion, construed together, as to the applicability of the underlying principle of propriety to the *ad interim* effectiveness of the order are reinforced and confirmed by the analogy which the opinion draws with respect to the attitude of the court in habeas corpus (p. 229); for, the im-

prisonment, if wrongful, is effective just as truly as the order, if wrongful, is effective, pending pursuit to conclusion of remedies afforded by state law. This difference, namely, that in a rate order under these constitutional provisions adequate remedy is afforded for *ad interim* losses, whereas in habeas corpus, nothing can remedy or restore the liberty lost meanwhile, further fortifies the argument.

Broadly, it is anomolous to argue that this Court meant, by anything said in the Prentis case, to indicate that while considerations of equitable fitness or propriety "and a regard for the solicitude the state had shown for the protection of the rights of the railroads," required the pursuit of the remedies afforded by the state before resort to the Federal courts, such considerations ceased to operate at the first intermediate point at which the railways found themselves dissatisfied and that such intermediate dissatisfaction relieved from the requirement to refrain from the Federal courts until final legislative action.

Another anomaly is presented: The District Court was asked to interfere to prevent the enforcement of the order, one of the grounds laid being that the State Supreme Court had refused to supersede

the order. The effect of this refusal, as an adjudication is hereinafter considered. The matter is referred to at this place to stress the inconsistency of an attitude which must start with the admission that confidence in the state's administration required a pursuit of the remedy provided by the state, and must conclude with undermining that confidence at the first dissatisfaction with the exercise of the judgment confided in, without awaiting action upon the entire record certified up.

The contentions of appellant disregard the true philosophy of the rule of comity or equitable propriety applied in the Prentis case. The principle of comity was derived from the respect which one sovereign independent state, by its courts, accorded another sovereign independent state. The obligation to show this regard is the more onerous when applied to the relationship existing between the states and the Federal government. None now disputes the supremacy of the Federal Constitution and the duty and power of Federal courts to protect rights guaranteed thereby. But this same duty and power rests concurrently in the state courts. And the delicate adjustment of our governmental machinery and the maintenance of the desired and even neces-

sary equilibrium between the states and the United States points to the wisdom of the accommodation insofar as possible of the powers and processes of the two. *Ponzi v. Fessenden*, 258 U. S. 254-259. Modern industrial and economic conditions and the proper and accepted growth and exercise of the power of both state and federal regulatory bodies such as the Interstate Commerce Commission and the Corporation Commissions of Virginia and Oklahoma have not only given rise to many new questions but have stressed the wisdom of the avoidance of avoidable interference with the proceedings of bodies which are striving to solve the problems involved in this branch of governmental administration. The Prentis case was a notable example of the wisdom of this principle. Undoubted power was denied exercise in deference to the establishment of mutual respect, and out of regard to those proprieties the observances of which requires the growth of mutual confidence. Acquiescence in the argument advanced for the appellant would, it is submitted, be a retrogressive step by no means required by the exigencies of this case. The opinion says: "Our decision does not go upon a denial of the power to entertain the bills at the present stage

but upon our views as to what is the most proper and orderly course in cases of this sort when practicable, etc." The constitutional provisions of Oklahoma by the retroactive operation of a substituted order if found to be required renders practicable and even mandatory the reimbursement of any intermediate loss sustained, so that no necessity exists on any theory for permitting Federal judicial intervention at the present stage.

The failure to observe the distinctions and facts here urged by appellees resulted in the misinterpretation of the Prentis case in the *Love v. A., T. & S. F.* cases in 174 Fed. 59, 177 Fed 493, 185 Fed. 321. In fact it does not appear that the matter was presented in those cases as here. These distinctions and facts led two of the three judges below not to follow these cases, though they are from the Eighth Circuit and were urgently relied on below.

Nothing the United States Supreme Court has ever said with reference to the Prentis case has modified its effect as here *contended*, though the case has been cited and commented on in the following cases (cases citing on other points not included): *Bacon v. Rutland R. R. Co.*, 232 U. S. 137; *Wilcox v. Gas Co.*, 212 U. S. (l.c. 40); *Mellon Co. v. McCafferty*, 239

U. S. 136 (failure to have assessment reviewed in Oklahoma State tribunals); *Dalton Mack. Co. v. Va.*, 236 U. S. 699, 701, where it is said: "The general principle is that it is not for the courts to stop officers of this kind from performing their statutory duty for fear that they should perform it wrongly." *Detroit & C. R. Co. v. Michigan R. Com.*, 235 U. S. 402-4.

See also the following cases citing the Prentis case on the point here pertinent, and supporting the position of defendants: *Wis.-Minn. L. & P. Co. v. Railroad Com.*, 267 Fed. 711, where the reasoning is cogent, and the statement respecting the invoking of the powers of the Commission by the utility and the pendency thereof of the case as to many towns is comparable to the situation of the complainants in invoking the rate-making powers of the Supreme Court and the continued pendency of the appeal: *Palermo Land & Lbr. Co. v. R. R. Comm.*, 227 Fed. 708, a very instructive case; *B. & M. R. R. v. Miles*, 218 Fed. 944.

The presumptions indulged in the Prentis case respecting the safeguards provided by Virginia upon exercise of the rate-making powers of her com-

mission are to be indulged equally in Oklahoma's favor, and equally, as well, it is true that it is "only a just recognition of the solicitude with which their rights have been guarded" requires here, as there, that "before resorting to courts of the United States" these complainants make sure that "the final legislative action" will not respect their rights.

Above, stress is laid upon the fact that by the provisions of the Constitution of Oklahoma the State Supreme Court would be required, in event it should conclude the order appealed from provides inadequate rates, to make a substituted order effective as of the date of the original order. This point was stressed in the District Court. Apparently anticipating a repetition of the argument in this court, appellant, in its brief and printed argument, devotes considerable space, commencing at page 80, in endeavoring to demonstrate that the Constitution of Oklahoma does not mean what it says when it declares "such substituted orders shall have the same force and effect (and none other) as if it had been entered by the Commission *at the time the original order appealed from* was entered."

It is only necessary to refute this anticipatory argument, in its various headings, as made, to point out:

1st. That the constitutional provision is so clear as not to have needed any construction by the Oklahoma Supreme Court, and that the substituted order would not be retroactive within the meaning of the quoted portion of Section 23, Article 9, of the Oklahoma Constitution which relates to orders of *the Commission*, and which is found in the same section which, by express terms, makes the substituted order of the *Supreme Court* take effect as if it had been entered at the time the order appealed from was entered.

2nd. That the argument that no security is required of patrons in event the order is not superseded, whereas security is required of the utility to make refund in event it is superseded, can hardly be seriously considered; the former being altogether impractical and impossible and the latter being perfectly practical and possible, it not being contended that the provisions of the Constitution of Oklahoma in this respect violates any constitutional principle. It might be stated, however, that the deposits made by domestic consumers is certainly some security, and that, as a practical matter, both the State Supreme Court and the *Commission* could and would protect the utility by not requiring further service to any patron until such pa-

tron had paid the lawful rates of the substituted order for the *ad iterim* period—which, of course, would in substantially every case practically enforce payment.

3rd. That what has just been said was recognized in the case of *Southwestern Bell Telephone Company v. Danaher*, 238 U. S. 482, under the principle of which the utility could not be punished for refusing to serve one delinquent in past rates due for service *ad iterim* the original and the substituted order. Moreover, the argument as to taking property without just compensation indulged by appellant appears strained, since the courts would be open for recovery in event payment were not procured as pointed out above; and,

4th. That the argument anticipating injustice at the hands of the Supreme Court is not only ungraceful, but is one which this court refused to sanction in the *Prentis* case. Further, it leaves out of consideration the power of the Federal Court, if it should condemn the rate fixed in the last legislative step, to make such provision for payment by the patrons, a substantially uniform and continuous body, as would reimburse the utility for any loss sustained meanwhile.

### THE RES ADJUDICATA QUESTION.

From the preliminary statement hereinbefore made it appears that the statement by District Judge Cotteral in his separate opinion (Tr. 360), specifically respecting the Oklahoma Natural Gas Company (the opinion being common to both Oklahoma Natural Gas Company and Oklahoma and Muskogee Gas & Electric Companies) is equally applicable to the appellants in this case. Judge Cotteral said:

“In the first place, the state supreme court, in the case of Oklahoma Natural Gas Company, while doubting authority for a supersedeas, has rested a denial of it on the ground that there was an insufficient showing by the gas companies. Putting aside the supposed effect of this decision, illustrative of the views of that court, as an adjudication, the allowance of a temporary injunction necessarily involves a review and revision of the same. This the properties would hardly sanction, if it is avoidable.” (Tr. 360.)

Appellees considered, and yet consider, that this is more than a question of propriety and one which goes to the right to maintain the bill in the United States court to accomplish the same result, on the same grounds and for the same period of time as involved in the district court proceedings.

This appellant treats the contention made below and reiterated here that the denial of a supersedeas by the state supreme court was an adjudication as one which it "cannot understand" in view of the Oklahoma constitutional provisions, Article IX, Sections 20, 21, 22 and 23; and seeks to avoid the ordinary operation of the principle of *res adjudicata* by arguing that because the application for supersedeas was made in an appealed legislative rate-making case in the review of which the supreme court of Oklahoma acts legislatively, and, in a sense, as a supreme corporation commission rather than a supreme court, the action of the supreme court upon the application was consequently legislative. Whereas, the appellees contend that the question as to whether the denial of the supersedeas was a legislative or judicial act depends neither upon the predominant character of the body before which the application was made nor upon the character of the proceeding in which the application was filed, but rather upon the quality and character of the action invoked. The Prentis case settled that under the constitutional provisions such as those of Oklahoma and Virginia the affirmance or substitution of a rate order by the State Supreme Court is a legislative act. But, in

that case and as well in the case of *Oklahoma Operating Co. v. Love*, 252 U. S. 331, 335, it is recognized that legislative, executive and judicial powers are united and combined in the Corporation Commission, and that in some respects the Commission, and hence the court, may act judicially as well as legislatively in respect of orders in proceedings before the Commission and on appeal before this Court. The Oklahoma Supreme Court has frequently pointed out the same fact. *A., T. & S. F. Ry. Co. v. State*, 23 Okla. 510.

The question is, then, not whether the Supreme Court in some matters pertaining to rate orders acts legislatively and in some judicially, but, rather, was it acting legislatively or judicially in a given case. Rules to determine the matter have been frequently stated, perhaps never more clearly than in the *Prentis* case, where it is said (211 U. S. 226):

“A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule for the future and therefore is an act legislative not judicial in kind.”

At page 227 it is said:

“But the effect of the inquiry, and of the decision upon it, is determined by the nature of the act to which the inquiry and decision lead up. \* \* \* The nature of the final act determines the nature of the previous inquiry.”

Judge Cooley, in his *Constitutional Limitations*, 7th Edition, page 132, says that it is the absolute province of the judiciary to protect the rights and interests of individual citizens and to that end to construe and apply the law as being enforced; adding:

“And it is said that that which distinguishes a judicial from a legislative act is that the one is a determination of what the existing law is in relation to some existing thing already done or happened, while the other is a predetermination of what the law shall be for the regulation of all future cases falling under its provisions.”

The distinction between a legislative and a judicial act in such cases is well stated by Judge Williams, formerly of the Oklahoma Supreme Court, now United States Judge for the Eastern District of Oklahoma, in *A., T. & S. F. Ry. Co. v. State*, 23 Okla. 510, 552:

“This court, when reviewing an appeal from such an order, is not passing upon the question as to whether or not the order in effect confiscates the property of the appellant, or takes it

without due process of law, except in a legislative capacity by virtue of Section 22, Art. 9, *supra*, in considering and determining the reasonableness and justness of the action of the commission appealed from, as well as any other matter arising under such appeal, supported by the *prima facie* presumption that such action of the commission shall be regarded as *prima facie* just, reasonable and correct. However, should this Court sit as a court judicially to determine whether or not a rate fixed by virtue of an act of the legislature or of a commission created by law for such purpose should be set aside and annulled on the ground that it violates the constitutional rights of the carrier to that degree that it amounts to a taking of property without proper compensation, or without due process of law, a different rule would govern. In that case the judiciary in a judicial capacity would be sought to interfere to protect against a violation of the federal or state Constitution, and the rule in such case would be that before the court would interfere it must clearly appear that the rate or act complained of was confiscatory. But in the exercise of its peculiar jurisdiction as a legislative body, in reviewing the action of the Corporation Commission, the duty of this court is marked out in the Constitution, and that is to determine whether or not such order appealed from was reasonable, just, and correct, supported by the *prima facie* presumption in favor of the action of the commission that it is reasonable and just."

In *Detroit & Mackinac Ry. Co. v. Michigan R. R. Comm.*, 235 U. S. 402, 406, this Court notes the dis-

inction between "The judicial function of declaring a rate unreasonable and the legislative one establishing a rate as reasonable."

Now, to test the quality, whether legislative or judicial, of the order of the Oklahoma Supreme Court refusing to supersede:

First. Appellant contends that the Constitution of Oklahoma forbids judicial interference by any court of the State with the rate orders of the Commission and quotes a portion of section 20, article 9, of the Constitution. The constitutional provisions here pertinent are as follows:

Article IX, Section 20:

"No court of this State (except the Supreme Court, by way of appeals as herein authorized) shall have jurisdiction to review, reverse, correct or annul any action of the Commission within the scope of its authority, or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the Commission in the performance of its official duties: *Provided*, however, that the writs of mandamus and prohibition shall lie from the Supreme Court to the Commission in all cases where such writs, respectively, would lie to any inferior court, or officer."

Article IX, Section 21, provides:

"Upon the granting of an appeal, a writ of

supersedeas may be awarded by the Supreme Court, suspending the operation of the action appealed from until the final disposition of the appeal; but, prior to the final reversal thereof by the Supreme Court, no action of the Commission prescribing or affecting the rates, charges, or classifications of traffic of any transportation or transmission company shall be delayed, or suspended, in its operation, by reason of any appeal by such corporation, or by reason of any proceeding resulting from such appeal, until a suspending bond shall first have been executed and filed with, and approved by the Commission (or approval, on review, by the Supreme Court), payable to the State, and sufficient in amount and security to insure the prompt refunding, by the appealing corporation to the parties entitled thereto, of all charges which such company may collect or receive, pending the appeal, in excess of those fixed, or authorized, by the final decision of the court on appeal."

From the above quotation from Section 20 it appears that while the intent, generally, was that inferior courts should not have jurisdiction to interfere with any action of the Commission within the scope of its authority, yet that the Supreme Court should have this authority, which should embrace the power to annul, suspend, delay, enjoin and restrain with respect to the Commission's orders and authority. True, the limitation upon the authority of the Supreme Court in these respects

is that it must be "by way of appeals as herein authorized," but the idiom "by way of" simply means and can mean nothing other than "in or in connection with appellate proceedings." Moreover, the Supreme Court "as herein authorized" may annul any action of the Commission within the scope of its authority. One of the methods authorized, as appears from the above quotation from Section 21, in Article IX of the Constitution, is by awarding the writ of supersedeas which shall suspend the operation of the action appealed from. This was what appellant asked the Supreme Court to do. Now, "writs" are issued in judicial proceedings, and "award" is a term which denotes judicial consideration and action. The Oklahoma Supreme Court actually exercised jurisdiction of the application for supersedeas and refused, on the merits, to award the writ. But, measured by the test laid down for determining whether a given action is legislative or judicial, it certainly cannot be thought that the awarding of a writ of supersedeas makes a law or prescribes a rule for future action. That idea simply is not involved in the expression. In fact, the effect of the awarding of a writ is, by the language of Section 21, *supra*, "to suspend the operation" of the action appealed from. That is, it strikes down

a law which except for the awarding of the writ would operate. But the inquiry required to be made before striking down the law would not involve the consideration of facts pertinent to the making of a new rule to be applied thereafter, but would require an investigation of existing facts to determine whether the existing law should be struck down.

Second. It will be noted from the quoted portion of the order denying supersedeas that the denial was upon the merits. That is, the State court held in effect that the application therefor failed to show facts sufficient to entitle the plaintiff to the relief asked. The order of the Commission had increased the rate theretofore in effect. Hence the application for supersedeas was not for the purpose of procuring the continuance, pending the appeal, of the antecedent rate. The attack upon the order in the State court, precisely as in the Federal court, rested upon the contention that even the increased rate prescribed by the order of the Commission was confiscatory. The position of the appellant throughout has been that it is as truly an invasion of its constitutional rights to confiscate its property during the pendency of an appeal as to confiscate it after

the final determination of an appeal. The supersedeas proceedings in the State Supreme Court were instituted to thwart such *ad interim* confiscation. By Section 22 of Article IX of the Oklahoma Constitution, the Supreme Court, in determining the appeal, could consider and base its action only upon the evidence in the record as adduced upon the Commission. The preparation for submission of the abstracts of the appeal record, the argument thereof, the examination of an enormous mass of evidence by the Supreme Court, the consideration of the briefs and authorities of the parties to the appeal, of necessity, involve the expenditure and passage of time. The appellant, conceiving that the delay incident to this process would be harmful to it, prepared its showing and marshalled its facts, deemed to demonstrate that the order involved in the appeal was confiscatory, and rested on its constitutional rights. So, the Supreme Court did not make any finding or determination upon the record in the appeal, which alone it could consider in acting legislatively to make a rate; but on the contrary considered, and could have considered, only the sufficiency of the facts shown in the application for supersedeas placed before it by the appellant. It was not asked to make a rate order, nor to pass on facts

proper for consideration in making a rate order, but was asked to hold a presently enforced rate order void and suspend it pending the time it could reach and make a lawful rate order. If, instead of refusing the application, it had granted it, it could and would have granted the relief sought not by way of making a new order but solely by way of determining that the order attacked was an unconstitutional order in that it resulted in confiscation. Under the principles hereinbefore quoted by which the legislative or judicial quality of a given act is determined, and particularly within the reasoning of the Oklahoma court (23 Okla. 510, 552), it is submitted that the exercise of judicial authority was invoked and judicial authority was exercised by the Oklahoma Supreme Court when, passing on the merits, it declared that appellant had not made a case showing itself entitled to a supersedeas. It is not insignificant of the judicial quality of the supersedeas proceedings in the State court that if the appellant had there, on the same complaint and showing which it later made in the Federal court, secured exactly the same character of relief which it later sought in the Federal court, the later relief would not have been asked. It chose its first forum and having chosen

must abide the consequence of its choice. Napa Valley case, 251 U. S. 366.

Third. It is true, of course, that the appellant asked the Supreme Court that it be permitted ("authorized" was the word used) pending the determination of the appeal, to collect rates in advance of those prescribed by the order. But this is not the making of a rule for the future within the sense of the expression in the Prentis case. It is not more than, or other or different from, the prayer in its bill in the United States District Court. This contemplated that if the court should reach the conclusion that the operation of the rate order, pending the appeal, would amount to an *ad interim* confiscation and should be enjoined, it would nevertheless, in recognition of the fact that some rate must be collected between the time of the application and the time when the appeal shall be determined, "fix terms" upon which the injunction should issue, *i. e.*, condition the injunction that the appellant do not meanwhile collect more than a named rate. The difference is that between a *permitted* and a *prescribed* rate. The United States District Court could and did, preliminarily, *permit*, though it certainly could not have *prescribed*, an advanced rate.

Likewise on the supersedeas the Supreme Court could *permit* a rate, but its only power to *prescribe* a rate was either by affirming the order or by making a substituted order, and this only after it had, upon full consideration of the record sent up by the Commission, determined "the reasonableness and justness of the action of the Commission appealed from"—which, as is pointed out by Judge Williams in 23 Okla. 510, *supra*, is a different thing from adjudging that an order "should be annulled on the ground that it violates \* \* \* constitutional rights."

Fourth. If it should be urged that the application was for a legislative order fixing the rate pending the appeal, nevertheless before the court could grant this relief it would have first to determine if the rate enforced *pendente* would confiscate the company's property and invade its constitutional rights. This would involve a decision of existing facts and on existing and presently enforced laws and under the test would be judicial. But the Supreme Court did not get past this point. On the contrary, having decided that the company had failed to establish its claim on an unconstitutional invasion of its rights, it never reached the state of prescribing what rates should be applied. Such a

contention is untenable in any event; because if the Supreme Court had decided that the order complained of was confiscatory the declaration of that body would have been in effect the same as that of Judge Cottrel when he issued the temporary restraining order, viz., that the operation of the order will be suspended provided complainant do not put in force a rate in excess of such and such an amount and on condition, moreover, that complainant give a bond to refund in event it be ultimately determined that the rate should not have been suspended. The distinction clearly is between the suspension on conditions, and the making of a different rule for future action.

Fifth. But, it is stated that "no one will contend" that a writ of error would lie to the Supreme Court of the United States from the action of the State Supreme Court denying the supersedeas. What court has ever decided that a writ of error would not lie under such circumstances, and why should it not lie? The State Supreme Court purported to act judicially. It refused to issue a judicial writ. It held that the application failed to state *facts* sufficient to entitle the plaintiffs to supersedeas. This determined a question of law, within

the peculiar province of a judicial tribunal, and was equivalent to sustaining a demurrer and adjudicating the insufficiency of the showing. What is to prevent the complainants from presenting their claims of confiscation and of invasion of their federal constitutional rights, properly raised in the application, to the Supreme Court of the United States? Appellees find no authority which would prevent this, and appellant cites none. It is submitted that the question is adjudicated.

If the Supreme Court in denying the supersedeas acted judicially the principle of the Napa Valley case, 251 U. S. 366, applies. Here, as there, it appears that "the denial of the petition was necessarily a final determination based upon identical rights asserted in this court." The Napa Valley case and this is particularly emphasized in the same case, in the District Court, 57 Fed. 197, is authority for the statement that the absence of an opinion by the Supreme Court did not affect the quality of the decision or detract from its efficacy as a judgment upon the question presented, and its consequent conclusive effect upon the rights of the company. By the same token the adjudicative efficacy of the action of the Supreme Court in refusing supersedeas

cannot be affected by the question as to whether or not this court would have reached the same conclusion.

### THE CASE ON THE MERITS.

The order of the Commission (Tr. 100-120) perfectly supports itself. Adequate reasons, based upon testimony before the Commission, are stated respecting each step taken in the mathematical computations made in the process of reaching the Commission's figures as to values, operating expenses and rates.

Much matter included in appellant's affidavits in the district court was never submitted in evidence before the Commission, though full opportunity was there afforded for investigating every phase of appellant's situation. For example, the matter respecting the supervision charge found in Huey's affidavit (Tr. 257), and in Emerson's affidavit (Tr. 292) respecting the same subject was not only not submitted to the Commission, but Emerson's oral testimony before the Commission was contrary to the substance of his affidavit (Tr. 338). For further example, Uhlendorf, the company's engineer, in the first three pages of his affidavit (Tr. 273, 374, 275), submits summaries as to each "reproduction cost,"

"present value," "reproduction cost, five-year average," "reproduction cost new, less depreciation, five-year average," showing figures identical in amount with those recited in the order as having been submitted by him to the Commission (Tr. 102, 103, 304). *Such figures were based on March 31, 1920, labor and material costs* (Tr. 274, Tr. 103). Yet there does not appear to have been introduced before the Commission on behalf of appellant any evidence or even estimate or opinion of Uhlendorf or any other witness of the company which would bring these March 31, 1920, prices down to prices prevailing in December, 1921, the time the hearing, such as Uhlendorf embraces in the last three paragraphs (Tr. 275, 276) of his affidavit submitted to the district court. The Commission then did not have before it the benefit of what the appellant claimed to be the replacement cost of its properties at the time of the hearing. It did, however, have the benefit of the testimony of numerous witnesses (W. J. Pettee, Tr. 333, 342; A. F. Binns, Tr. 347; Minta DeFord, Tr. 347; B. P. Stockwell, Tr. 350; Claude Connally, State Labor Commissioner, Tr. 344, 355; and of its own engineer, Musson, Tr. 105), from which it was

able, by calculation, to ascertain the replacement cost at the date of the hearing, December 31, 1921, upon the identical items included in Uhlenendorf's inventories (Tr. 103), together with additions from the date thereof to August 1, 1921 (Tr. 105), which date was that of the last available data. Appellant, insofar as the hearing before the Commission was concerned, simply selected what the Commission properly described as a period wherein prevailed "the highest prices known in the history of the utility industry" and rested its entire case as to value on reproduction cost of labor and material elements of the property as of such time, supplementing the same with construction reports as to additions and betterments at actual cost, and furnishing no scale for percentage comparison of April, 1920, with December, 1921, costs for the same elements; though in Uhlenendorf's affidavit he states that:

"It is commonly known that material prices covering the commodities entering in the construction of the aforesaid gas properties have materially decreased when comparing the present day prices, December, 1921, with prices prevailing during March, 1920. It is furthermore known that labor wages have decreased when compared with the above mentioned dates,"

—for which reasons, without showing how, why, or upon what basis, Uhlenendorf adds:

“I have determined the valuation of the aforesaid gas properties,”

(Tr. 275) on the basis of December, 1921, prices.

Now, since the predicate of the effort to enjoin the rate must be primarily the value of the property, and since the only valuation offered by appellant in the district court is that of Uhlendorf above shown, and since the numerous and extended calculations of Straight, the company's mathematical expert, as to what the return would be under various supposed rates, etc., are predicated upon Uhlendorf's valuations, and since Uhlendorf's valuations represent his own unsupported, unexplained opinions or estimates, it is submitted that appellant has lamentably failed to sustain the burden cast upon one in its situation.

But Uhlendorf's method of arriving at costs applied to inventories, as that method was described in the 1920 hearing before the Commission are subject to serious question. E. B. Black, a consulting engineer who represented one of the cities affected in that hearing, shows Uhlendorf's method of arriving at labor and material costs which he applied to inventory items to have been so inaccurate, unscientific, and based in large part upon so many

elements, both as to material and labor, which were in no respect concerned or involved in appellant's properties, as to be altogether inaccurate. Mr. Black's communication, which by stipulation was in evidence before the Commission (Tr. 305-322) is in the record here, and his conclusions are summarized in the following statement (Tr. 322):

"Obviously the theory of valuation developed by the company's engineer, has not been accurately developed mathematically, and the results of my investigation of the few items I have examined leads me to think that there are perhaps other errors of sizable proportion in the various other parts of the valuation."

So, even before the district court the sole valuation figures submitted by appellant are of doubtful worth. Not only so, but the facts on one and on the other side, respecting values for a rate base and respecting every questionable element of operating expense, are in dispute. The company's officers and experts express their opinion. The Corporation Commission's engineer and experts and persons familiar with prices of labor and material, appearing on behalf of the public, express their opinions backed up by documentary evidence as to prices of large elements of material in the plant (Tr. 343, 347). An employer of labor and the State

Commissioner of Labor testify as to labor cost (Tr. 344, 347). The evidence conflicts. Since every presumption of law is to be indulged as to the Commission's order after its findings (*Knoxville v. Knoxville Water Co.*, 212 U. S. 1; *Des Moines Gas Company v. Des Moines*, 238 U. S. 153, 163; *Van Dyke v. Geary*, 244 U. S. 30; *La. Rrd. Comm. v. Cumb. Tel. & Tel. Co.*, 212 U. S. 414; *L. & N. R. Co. v. Railroad Com.*, 208 Fed. 35, where authorities are collected), the situation is subject to the observation made in *Knoxville v. Knoxville Water Company*, 212 U. S. 1, at page 18:

“The valuation of the property was an estimate and is greatly disputed. The expense was not agreed upon, and insofar as much of the testimony is concerned it was that of expert witnesses employed by the parties.”

In the circumstances, in estimating the value of reproduction cost data, the Commission had the alternative of adopting Uhlendorf's views or the views of Musson and of the other witnesses testifying on behalf of the public. Every tribunal exercising discretion is forced to decision at this point. The Commission decided to adopt Musson's figures based upon August 1, 1921, prices (Tr. 105); and, finding from other testimony in the case, when compared

with Musson's August 1, 1921, figures, that material reduction had taken place to the date of the hearing, reduced those figures by processes plainly disclosed (Tr. 105-109), to ascertain "replacement value as of the present date," the date of the hearing (Tr. 106), and reaches the conclusion that at that time the replacement value of the property of the company used and useful and owned by the company is \$1,704,143 "*inclusive of all reasonable claims* for working capital, going concern value and all the usual intangibles contended for in a replacement valuation \* \* \* as engineering, superintendence, injuries during construction, legal expenses, interest during construction, etc.", after being depreciated (on the same percentage adopted by Uhlendorf, as calculation will show) (Tr. 109). In doing as it did the Commission was acting within its province, exercising its discretion reasonably, as a reading of the order will show. This court stated in the *Minnesota Rate Case*, 230 U. S. 4343, "we do not sit as a board of revision to substitute our judgment for that of the Legislature, or of the commission lawfully constituted by it, as to matters within the provinces of either." *San Diego Land & Town Company v. Jasper*, 189 U. S. 343-446.

So much for the replacement cost data.

The Commission then (Tr. 109) considered the original cost of the properties, and stated:

“In the light of these conditions, and others that might be set forth, the Commission has concluded that a fair and liberal rate basing value of the property involved in this case in the original cost as shown by the Commission’s engineer (Musson’s exhibit No. 1) *without depreciation* but with certain modifications and amplifications which, *for reasons which will be fully set forth*, the Commission finds proper.”

(Tr. 110.)

The method of calculation by which the Commission arrived at the deduction made from the original cost and the reasons for making the deductions are fully set forth in the order (Tr. 110).

The depreciated replacement cost of the property, as existing October 31, 1921, on the basis of December 31, 1921, cost for labor and material, was found to be \$1,704,143 for the Oklahoma City division. Contrasted with this, the historical cost of the same property to the same date was found to be \$1,762,025, which was adopted as a rate base. Since the historical cost exceeded the replacement cost by approximately \$58,000, the discussion as to what is a proper theory for valuation becomes academic, for it would avail appellant nothing to establish its

theory that the replacement cost alone is the proper base for ascertaining value, when as a matter of fact the base assumed for the rate is in excess of that ascertained on the theory contended for.

Thus, the only real issue revolves about the propriety of the deductions which the Commission made from the original cost figure. And, principally, the complaint is directed toward the deduction of \$481,365.72, which amount had been collected, under the practice permitted by the Oklahoma and other Commissions, as a 5% annual return upon the value of the property for the creation of a depreciation and amortization fund. Such fund *had not* been used for the purposes of its creation, nor was it on hand. It had been used either in paying dividends or in acquiring property which was of necessity included in the inventories. The propriety of this deduction is now discussed:

**THE DISSIPATED DEPRECIATION RESERVE  
FUND PROPERLY DEDUCTED FROM VALUE  
FOUND.**

With respect to this matter it is again to be pointed out that the Commission could act only upon evidence submitted to it, and was required from this evidence to make its findings and reach its conclu-

sions. From the annual reports filed before the Commission it found that the "average investment during the seven years enumerated was \$1,375,330.61; that the annual average return for dividends, interest, depreciation and other purposes was 17.8%," and that "during the whole of that (seven-year) period the Commission recognized 8% per annum as a reasonable return for dividends, interest, etc., and 5% per annum as a fair basis upon which to accure a fund for obsolescence, depreciation, etc., making a total, recognized to be fair and equitable, of 13% per annum" (Tr. 112). The declaration of the Commission that it had recognized 5% per annum as a fair basis upon which to accumulate a fund for depreciation, obsolescence, etc., is verified by the affidavit of the manager of the rate department of appellant, Mr. Straight, who states (Tr. 185):

"The reports of decisions of the Corporation Commission of Oklahoma indicate that the Corporation Commission has uniformly allowed five per cent (5%) for depreciation and amortization of natural gas distributing properties. *This is in line with corresponding allowances made by other public service commissions.*"

For seven years preceding this 5% had amounted to \$481,365.72. This amount was ascer-

tained by consideration of sworn annual reports of complainant (Tr. 111) to the Commission, which, under authority of *Railroad Commission v. Cumberland Tel. & Tel. Company*, 212 U. S. 414, 421, were properly considered by the Commission. This fund should have been kept intact except as diminished by charges properly made against it for maintaining the integrity of the property (Tr. 112). Respecting this matter the order said:

“Testimony shows (Record page 156) that while the company has on its books what it terms a depreciation reserve account, it maintains no depreciation reserve in fact, and the account has not been carried regularly, *repair or maintenance bills not being charged to this amount but to current expenses*. The Commission will require henceforth that a depreciation reserve account be carried and maintained, all replacements being charged against such account and all charges against and balances in said account being reported to the Commission regularly in current reports of revenues and expenses.” (Tr. 117.)

And also said:

“As already stated, the record shows that the property involved in this case has been and is being maintained in condition to give service, all replacements and charges properly chargeable against depreciation reserve *having been taken care of out of current revenues*.” (Tr. 119.)

In other words, the company had collected and recognized its right to collect 5% per annum to create a fund for depreciation and amortization, but had charged to operating expenses instead of against this fund—so far as appears from the facts disclosed to the Commission—the expenditures made to keep the plant at par and which should have been a charge against the depreciation reserve fund. Or, to state it in another way, the company has collected for depreciation and amortization twice, once by charging it to operating expense, and once for creating a depreciation reserve fund. The problem was what to do in the circumstances. What the Commission did and why it was done is shown by the following statement:

“As heretofore shown, from the present value of the property used and useful, has been deducted that part of the property which has been paid for by patrons and in which the company has no investment, and depreciation that has been allowed and earned but appropriated to their own use and benefit by the owner of the property, either by the payment of excess dividends, or (more likely) by paying for additions and betterments to the property. If, as has been assumed likely, this money has been put into additions and betterments, then it has again been included in the rate base on which to draw further dividends. If it has been returned to the owner as excess dividends, then it no longer

is invested in the property, and in neither event would the public be entitled to continue to pay dividends thereon. All calculations appearing hereinafter involving a rate base are based upon this value of \$1,206,625, the Commission recognizing this amount as that which the company still has in the property and which has not been returned to it." (Tr. 113.)

Aside from the sworn reports of the company, the only testimony before the Commission as to this matter was, again, that of Emerson, who, in substance, stated that the company did not have a depreciation reserve fund, but did have, he thought possibly, a depreciation reserve account, the amount of which was, he thought, approximately \$250,000, which account had been made from time to time with small amounts added to it, usually in December of each year, but which had not been carried regularly, the account having been set up from time to time as the company had earnings available for the purpose, but that *no repair or maintenance bills have been charged to this account, such having been charged to current expenses* (Tr. 351-2). This was all the information vouchsafed to the Commission on this subject. Mr. Emerson, however, made an affidavit (Tr. 280), submitted to the district court, that appellant had for a long time maintained a deprecia-

tion reserve account, the credit balance of which was \$489,702.82 as of October 31, 1921, \$100,000 of which had been credited during the year ending on that date, and \$149,384.02 having been charged against the account for replacement during the same period, of which \$12,180.12 was for replacement of gas properties in the several divisions. He stated that during the year ending October 31, 1921, there was no charge to the maintenance account (*quaere* as to whether or not reference is to depreciation account) for cost of upkeep except that properly classified as current repairs and maintenance, and that in his opinion the amount was not excessive; that while the amount charged to the depreciation reserve for replacement in the gas property does not equal the average annual amount required in the long run for depreciation and amortization, the inadequacy of the amount charged has no bearing upon the actual amount charged to maintenance and does not result in increasing the amount above what was actually required for current repairs and maintenance, and that the amount credited to and charged against the depreciation reserve account has been limited by the earning situation and the difficulty of securing money during the past few years, by reason of which fact considerable replace-

ment has been deferred and will be required to be made during future periods, and that in any event the replacement which must be made varies from year to year and that it is good practice and necessary to vary current charges to meet the situation resulting from fluctuating net earnings. Of course, there was no opportunity to cross examine Emerson as to this affidavit, the case having been heard only on verified pleadings and affidavits.

It is needless to comment upon the discrepancy between Mr. Emercon's testimony on December 31, 1921, and his affidavit of February 8, 1922. The latter, however, when carefully analyzed, supports the substantial facts stated in his testimony before the Commission, viz., that the company paid all repair and maintenance bills as current expenses, and that, though it knew that it was permitted to collect the 5% to establish a depreciation reserve fund to keep the property in condition and amortize it (Straight's affidavit, Tr. 185), it had no money for such purpose, the whole matter being but a set of bookkeeping entries.

At any event, the Commission could only act on the testimony before it, and it is submitted that upon that testimony its action was proper and in

accord with the attitude adopted by like commissions with practical unanimity as a result of the study of public utility accountants and engineers. An appendix shows a list of cases supporting the principles upon which the Commission acted in this case. Moreover, the principle finds support in the following quotation from *Railroad Commission v. Cumberland Tel. & Tel. Co.*, 212 U. S. 414, 424:

“If the onus rested upon the Commission to show these facts it is evident that the obligation has not been fulfilled, but it is just here that the difficulty lies. It was obligatory to the complainant to show that no part of the money raised to pay for depreciation was added to capital, upon which a return was to be made to stockholders in the way of dividends for the future. It cannot be left to conjecture, but the burden rests with the complainant to show it. It certainly was not proper for the complainant to take the money, or any portion of it, which it received as a result of the rates under which it was operating, and to use it, or any part of it, as to permit the company to add it to its capital account upon which it was paying dividends to shareholders. If that were allowable, it would be collecting money to pay for depreciation of the property, and, having collected it, to use it in another way, upon which the complainant would obtain a return and distribute it to its stockholders.”

The quotation hereinbefore made from the Commission's order is in effect but a paraphrase

of the observations made in the last above question. The correctness of the principle applied appears upon a consideration of this fact, viz: If appellant, which had collected this fund, which admittedly has not been used for any of the purposes for which its collection was permitted, had had the fund intact on hand, it would be invested and the income from it would be a part of the gross revenue of the property. Now, such income would equal a fair return upon a like amount of money invested in the properties, and, of course, by virtue of its inclusion in gross income and consequently in net income, after deducting expense, would be equivalent to the return which the company would be entitled to earn from the amount deducted from the rate base on account of its diversion. So, whether it were deducted from the value to ascertain the rate base, or whether the company should have been charged with income on such an amount as was supposed to be on hand, the net result would be the same.

**RESPECTING THE CLAIM THAT PAST EARNINGS  
HAVE BEEN DEDUCTED.**

Considerable space is devoted by appellant to argument and quotations from authorities to the effect that "there is no authority in law for deduct-

ing past earnings, but on the contrary the decisions hold that past earnings cannot be deducted." No fault is found with the legal principle stated in the *decisions* quoted from. But it is not applicable in this case for the reason that the Commission did not deduct anything from the value of the properties for past earnings. It is true the Commission did make calculations which show that the company had during the past seven years been receiving an average annual return of 17.8% (Tr. 112), and that the effect was to produce an actual surplus of \$256,808.64 over and above the return to the owners of the property of 8% which was permitted, plus 5% for the creation of a depreciation and amortization fund. In other words, it was demonstrated that the company had received 8% per cent for return plus \$256,808.64, which the Commission described as surplus, over and above the 5% necessary to create the reserve. But this surplus was not deducted; and, strictly speaking, the reserve fund was not an earning; "it was an amount collected by the company for the purpose of maintaining the integrity of the original investment" (Tr. 112), and was not a fund which the company could use for its private purposes.

The fact that the surplus earnings of the company were in no wise deducted from the rate base renders the discussion futile. For the Commission recognized, as was stated in one of the cases, that the company had the right "to distribute this surplus among its stockholders in dividends." The fact that the company had heretofore made a surplus over and above an 8% return and a 5% depreciation charge is no reason for its contending that its property will be confiscated unless it is permitted to continue to earn a surplus.

#### **DISALLOWANCE OF TWO AND ONE-HALF PER CENT SUPERVISION CHARGE JUSTIFIED.**

Pages 62 to 72 of appellant's brief are devoted to a discussion of claimed error in connection with the disallowance of the supervision charge of  $2\frac{1}{2}\%$  of the gross income heretofore paid to the Byllesby Engineering and Management Corporation. The brief states:

"This management fee was and is a legitimate operating expense incurred by the company under sound business management, and there is *no evidence* whatever in this record showing that the same is not a proper charge."

In asserting that there is no evidence whatever in the record showing that the management fee is

not a proper charge appellant is simply mistaken. The testimony before the Commission is found in the record (Tr. 336) and was that of the same person, W. R. Emerson, who also made an affidavit introduced in the district court (Tr. 292), in support of the affidavit of A. S. Huey (Tr. 268), who did not testify before the Commission. The Commission was, therefore, in making the order without the benefit of the information, whatever its value, embraced in his affidavit (Tr. 257).

It appears therefrom, however, that Mr. Huey professes that a "management charge of  $2\frac{1}{2}\%$  of the gross earnings" of appellant is made (Tr. 268). This conforms to Emerson's testimony before the Commission that the Byllesby Engineering and Management Corporation received, in addition to an engineering fee of 7.5% on construction work, 2.5% on "every dollar" appellant "takes" in for a supervision fee. Mr. Huey claimed that only one-half of the supervision fee, or  $1\frac{1}{4}\%$  thereof, had been charged for the year 1921 (Tr. 269) and in this statement he has the support of Mr. Emerson, the auditor of appellant (Tr. 292-3). But the testimony of Emerson before the Commission was to the contrary. Mr. Huey states that in his "judg-

ment" and "opinion" making the charge, apparently referring to the one-half of the supervision fee, was entirely reasonable and proper (Tr. 269), in support of which opinion he lists as officers of appellant corporation, one president, six vice-presidents, a general manager who is also a vice-president, a secretary and treasurer and seven assistant secretaries and treasurers, of all of which officers only a vice-president and general manager and the secretary and treasurer reside at Oklahoma City, which is the principal office of the company, the rest apparently residing in Chicago. It is not disclosed whether or not these thirteen non-resident officers are officers of other public utility companies in the four hundred cities, towns and villages in sixteen states whose affairs are supervised by the Byllesby Engineering and Management Corporation (Tr. 257), nor is it shown precisely what these officers do to help earn the  $2\frac{1}{2}\%$  of gross receipts paid to the company which pays their salaries and in whose interest they seem to have so managed appellant's affairs as that the real employer receives  $7\frac{1}{2}\%$  of every dollar in construction work (Tr. 336) and  $2\frac{1}{2}\%$  of gross receipts. Mr. Emerson, treasurer and general auditor, who alone, in the hearing before the

Commission, testified concerning this supervision charge, stated that appellant itself paid the salaries and expenses of managing its business and that no one representing the management company was in Oklahoma City participating in the management (Tr. 336-337). The whole matter was sifted by cross examination, to what appears in the following colloquy:

“Q. Have you, among your records anywhere, anything which will show the tangible benefit to the Oklahoma Gas & Electric Company from that supervision you spoke of, for which 2.5 per cent of the gross income is paid?

A. *I don't know that I could put my hand on anything tangible.*

Q. Do you know of anyone connected with your company that could do that?

A. My opinion of that is that if it was necessary to go into all of the details, it would be well to have the Byllesby concern answer those questions themselves.

Q. *You are the concern that are asking for the rate, and you must justify yourselves as to that.*

A. Yes, sir, and I have pointed out one angle of it—from the purchasing angle, which will amount to thousands of dollars per year, but when you pin me down to how much that is on each particular invoice, I couldn't do that.

Q. You say you didn't get it for the gas properties?

A. I wouldn't say we did or did not.

Q. How much does the gas end of the utility pay to the Byllesby Company—does it pay that 2.5 per cent?

A. Yes, sir.

Q. They get 2.5 per cent of all of it?

A. Yes, sir." (Tr. 338.)

Respecting the "purchasing angle" statement in the above quotation, the witness had been asked (Tr. 337) to produce on the second day of the hearing invoices which would disclose the benefit which he figures appellant had received by reason of the management services. It does not appear this was furnished. Moreover, large purchasing was done principally in connection with construction work on which the company received an entirely separate charge of 7.5% (Tr. 339). Further, the witness averred that he was "not prepared to say" whether anything had been saved by way of purchases in the gas department of the utility. It was attempted to inject the idea that the Byllesby Engineering and Management Corporation had been financing appellant (Tr. 341). This develops to have been the H. M. Byllesby Company (Tr. 338), still another organ-

ization, which apparently has the agency for selling the stock of appellant and marketing its securities, and to whom interest was paid for any money advanced. As a matter of fact, there appears to be one parent company, The Standard Gas & Electric Company, which owns and controls the Byllesby Engineering and Management Company, engaged in supervising and constructing the subsidiary local properties; the H. M. Byllesby Company, engaged in selling the stock and securities of the local distributing companies; and the local distributing companies themselves. This much was, with difficulty, developed from the testimony of Emerson (Tr. 338). So that it was not impertinent to characterize the zeal of these several companies in behalf of one another as "coming to their own rescue" (Tr. 341). The Commission could but have said on the sole testimony (Emerson's) before it (Tr. 63):

"With an operating ratio of about 80, which this company has enjoyed heretofore, a payment of 2.5 per cent gross earning is 12.5% of the net, *and can be defended only by a clear and definite showing of value given which is not available in the record in this case.* \* \* \* The Commission cannot permit this practice to go longer unrestrained, and will not permit this charge to be made hereafter *at least until such*

*time as it can be shown to be reasonable and just."*

It was the duty of appellant before the Commission, as stated in the case of *Knoxville v. Knoxville Water Company*, 212 U. S. 1, 18, to assist in performing the delicate function of rate making "by a frank disclosure on the part of the company to be regulated," who "will find it to their (its) lasting interest to furnish freely the information upon which a just regulation can be based." Under this principle appellant is in no position to complain of the disallowance of the supervision charge of 2½% as a part of operation expense, at least until such time as it shows the Commission that such charge is reasonable and just. The Commission reserved to appellant an opportunity to disclose that the payment was a proper operating expense. The only place in the order, moreover, in which the 2½% item was given material weight was in the calculation of expected net income as respects which it was disallowed and deducted from reported past operating expense. It was not in any way included in the deduction of \$481,365.72 for dissipated depreciation and amortization (Tr. 62) and therefore has no bearing in ascertaining or calculating the rate base value.

The cases cited by appellant as to allowances elsewhere made for alleged similar services can have no application here, because it appears that the propriety of the charge was supported by evidence in such cases, whereas here the evidence before the Commission not only did not support but positively condemned the charge.

**DEDUCTIONS MADE FOR EXTENSIONS PAID  
FOR BY CUSTOMERS JUSTIFIED.**

The Commission deducted \$79,566 for property attached to the system, but which had been paid for by patrons. The method of arriving at this item is described in the order (Tr. 105-106) from which it appears that the Commission had requested complete information as to the amount of the items which patrons had installed at their own cost in order to secure service from appellant, but that *incomplete* information had been furnished in response to request for *complete* information (Tr. 106). The Commission applied percentages disclosed by such information as was presented and leaves the matter open for further showing if its deductions from the facts were incorrect (Tr. 106). The theory of this deduction is thus expressed: "The Commission holds the company not entitled

to a return upon property in which it has no investment," and "It is clear that the company is not justified in capitalizing an investment of this character, and it is fair to deduct the amount thereof."

It is not disputed that these extensions paid for by consumers in order to procure service were included in the inventories, nor is it claimed that the company owed the consumer for the outlay. No disclosure was made to the Commission such as purports to be made in Emerson's affidavit in the district court (Tr. 294), that additions and betterments made prior to June 30, 1914, were made at the company's expense. The Commission simply acted on testimony before it. Now, if the company does not own and did not pay for and does not owe for these extensions, it is difficult to see how it is entitled to earn a return upon them; whereas if it did either own or pay or owe for them, it not only failed to make frank showing of the fact to the Commission, but, as well, yet has opportunity to do so.

Whereas it is said (Appellant's brief, 61, 62) that a like deduction was disallowed in the case of *City of Baxter Springs v. Bilger's Estate*, 204 Pac. 678, as a matter of fact that case was not one of valuation for rate making, but was a valuation for purchase by the city under the terms of a franchise per-

mitting purchase; and the holding there, l. c. 680, was upon the theory that in all probability the company owed the consumers for the service lines and that as between the city and the company such lines “were a part of the property that the city elected to purchase.” In any event, the appellant had no investment in property included in its inventory to the value named, and is not entitled to have the public, including those who constructed the extensions, pay *it* a return thereon.

**GENERALLY, AS TO OMISSIONS FROM AND DISCREPANCIES BETWEEN EVIDENCE BEFORE THE COMMISSION AS CONTRASTED WITH THE AFFIDAVITS SUBMITTED IN THE DISTRICT COURT.**

Hereinbefore reference has been frequently made to omissions from and discrepancies in the testimony for appellant before the Commission as contrasted with matter embraced in the affidavits which it submitted to the district court. Also, reference has been made to the fact that as to certain disallowed items the Commission has indicated that whereas on the evidence before it the items would have to be disallowed or deductions made, the matter should be left open for the company to justify its claims in respect of such items by proper evi-

dence, in event it felt itself aggrieved. Appellant had fullest opportunity to make its own case before the Commission. The Commission could base its order only on the facts before it. sA to this order, it is submitted that a reading thereof is sufficient to establish the conviction that not only a high degree of intelligence was exercised in its making, but that a proper conception of the moral responsibility involved in the accomplishment of justice as between the company and its patrons is exhibited thereby. These considerations suggest the applicability of the observations hereinbefore referred to, made in the Knoxville case, 212 U. S. 1, 18, that the duty rests upon a public utility whose condition is being investigated to make frank disclosures "and to furnish freely the information upon which a just regulation can be based"; and moreover suggest the applicability of the observation of this court in the case of *Galveston Electric Company v. Galveston*, 1 U. S. 1, 66 L. Ed. 383, as to the reasonableness of a belief that the Commission would give "full and fair consideration to a proposed change in rate," based on alleged improper deductions, if application should be made therefor and frank disclosures should be made of the facts as to elements respect-

ing which appellant complains. It does not become appellant to complain in this court that constitutional rights have been invaded. Such claim cannot be maintained in this court when the company failed to fairly disclose the facts in issue to the Commission itself. *Wis. Minn. L. & P. Co. v. Railroad Com.*, 267 Fed. 711 (l. c. 720), the principle whereof is supported by *Railroad Com. v. Cumberland Tel. & Tel. Co.*, *supra*; *Home Tel. Co. v. Los Angeles*, 211 U. S. 265, 281; *Manufacturers Light Co. v. Ott*, 215 Fed. 940, 950, of which the ninth syllabus reads:

“In a suit to enjoin the enforcement of gas rates fixed by a state commission after a hearing the court cannot consider *ex parte* affidavits to supply the place of evidence which complainants had the opportunity to produce before the commission, but did not, and on such affidavits set aside the findings of the commission. Nor can it set aside such findings where on the evidence there is ground for difference of opinion among reasonable men.”

#### THE LEAKAGE PROBLEM.

In the District Court this case was argued at the same time as the case of Oklahoma Natural Gas Company, likewise in this court on error, being Cause No. 406, October Term, 1922, advanced for submission at the same date as the instant case. The question of leakage is discussed somewhat at length

in appellees' brief in Cause No. 406, commencing page 86, and the statement there made respecting the Oklahoma Natural that much of the difficulty in the case resulted from leakage or waste of gas, is equally applicable to the instant case. As hereinbefore pointed out, and as stated in this appellant's brief, page 83, prior to the establishment of the city gate rate method of compensation the Oklahoma Natural Gas Company, which furnishes gas to these appellants, had borne all of the loss due to leakage, or, as appellant chooses to term it, "unaccounted for gas." The gas engineer of the Commission, J. W. Duval, deposes:

"That the amount of unaccounted for gas shown and found to exist by the Corporation Commission in the system of the Oklahoma Gas & Electric Company, to wit, approximately 2,000,000 cu. ft. per mile of 3-inch equivalent main, is excessive and beyond that which would be considered reasonable; that said amount of leakage is approximately ten times the amount fixed and allowed after an exhaustive hearing before the Kansas Industrial Commission and is *four times the amount which should exist under reasonable operating conditions.*

"Affiant further says that leakage in excess of 500,000 cu. ft. per mile of 3-inch equivalent main, is in excess of what he regards as reasonable or allowable under anything like ordinary operating conditions" (Tr. 330).

It is shown by the affidavit of Mr. McKay (Tr.

326) that in February, 1921, the loss in the Muskogee system per year per mile on 3-inch equivalent main, was 3,034,000 cu. ft., which, as was remarked by Chairman Russell of the Commission (Tr. 353), was about 40% or 50%. This remark was declared by the company's attorney to be correct (Tr. 353). It appears that the leakage in the Muskogee system has been reduced from 40% or 50% to below 14% as a result of "considerable work" done to stopping the leakage there (testimony of Mr. Crutcher, appellant's gas superintendent, before the Commission (Tr. 353). Mr. Crutcher further testified as follows:

"Q. Is there any such dissimilarity between Oklahoma City and Muskogee that would make it impossible, with prudent expenditure, to place Oklahoma City in the same condition as the Muskogee plant is with respect to leakage?

A. I don't exactly understand the question. (Reporter reads question to witness.) I don't know of any.

Q. As a matter of fact the condition in Muskogee can be improved?

A. Yes, sir.

Q. With prudent expenditures?

A. I wouldn't say they have any. It would be very problematical as to whether the benefit to be reached by an expenditure of a con-

siderable sum of money would be offset by the amount saved.

Q. The physical value of a gas distributing plant would be more or less dependent upon whether or not it was tight or loose on the question of leakage, would it not? In other words, a leakage plant, even though the physical elements are the same as in a tight plant would not be worth so much?

A. If you are assuming a tightening up of the joint, that would be a different matter.

Q. A leaky system is not worth as much, other things being equal, as a tight system?

A. Oh, no."

In the light of the leakage disclosed to have existed in the Muskogee plant, it is little to be wondered that the company supplying the gas sought to transfer the burden of leakage from its own to that of the shoulders of the owner of the local distributing plants; and the experience in Muskogee of a reduction of leakage from 40% to 50%, to 14%, in less than one year indicates that the Commission correctly concluded, in abrogating the divisional contracts, that the placing of the burden of leakage where it belonged, that is, upon the owner of the system in which it occurred, would greatly stimulate a tightening up in the local distributing systems. But perhaps as important is the fact that the re-

duction in the Muskogee system was accomplished with prudent expenditure and no reason was known by the company's expert why, with prudent expenditure, the loss from leakage in Oklahoma City could not be reduced as had been done in Muskogee. Thus is largely eliminated the contention that the expenditure required to tighten up the system would be prohibitive. It is further to be pointed out that though the issue of leakage was raised in the answer, and though appellant insists that no provision is made for added income to bring the plants to such a state of tightness as to reduce the leakage to the permitted amount, no evidence as to what the required amount would be is furnished.

The last question and answer in the above quotation from the testimony before the Commission of Mr. Crutcher stresses also the contention that if appellant either defectively constructed or has negligently permitted its system to become leaky the value of the system should be reduced to such an amount as would equalize the loss resulting from its leaky condition; because of two systems of equal inventories obviously one which is leaky is not worth as much as one which is tight.

Appellant affects to condemn the Commission's

order placing *a part* of the leakage burden on it by reference to the case of *Landon, Receiver of the Kansas Natural Gas Co., v. Court of Industrial Relations of Kansas*, 269 Fed. 433. The principle of that case, however, should have no application here. It was there said that for more than seven years the public has been receiving service from the distributing companies at rates prescribed for it, which were too low to provide for operating expenses, depreciation and a fair return (269 Fed. 442), with the natural result that repairs and replacements had not received sufficient attention. Whereas, in this case the order demonstrates that the company had received a return sufficient to have created a substantial surplus in excess of a net reserve of 5% for depreciation and amortization and 8% for return. As was deposed by Mr. McKay:

“From the foregoing figures it is clear that this company had, during the past seven years at least, ample funds available to have maintained its property in a reasonably good condition, which, had this been done, would have avoided the gross waste of gas which has resulted in fact from the neglect, failure and refusal of this company to apply its surplus revenues to the prevention of such waste and loss, instead of permitting such surplus to be used otherwise and this gross loss and waste of gas to continue” (Tr. 327).

Further, appellant never made application for an adjustment of its rates prior to July, 1921, thus demonstrating that it was satisfied with the equivalent of 12.5% of the net earnings which it paid to the affiliated engineering company as a supervision charge, and with the large surplus received by the company itself in addition to 5% for depreciation and 8% for return. It must be assumed that it had adequate funds to keep its plant in a reasonably tight condition. A prudent supervision of the business of the company must long ago have demonstrated to the management that the plants were in such state as to waste this valuable natural resource at an inexcusable rate; which, coupled with the fact that it had earnings sufficient to keep its plant in proper condition, justifies penalizing appellant by requiring it to bear the portion of the leakage in excess of 10% within the meaning of the Landon case (269 Fed., l. c. 442). Further, the order of the Commission "does not put upon the distributing companies the *whole* burden," but permits the company to shoulder on to the public 50% of the leakage.

In the affidavit of Mr. Crutcher before the District Court the claim is made that electrolysis, caused by

improper bonding of street railway tracks, occasions much leakage (Tr. 272). But this is met with the affidavit of the engineer of the Street Railway Company (Tr. 331), showing the proper bonding of the railway tracks, and that "affiant has never heard any complaint" from appellant that the bonding of the rails was inadequate or insufficient.

Then, it is insisted that much of the leakage is due to the state of the customers' pipes installed from the curb to the meter and an elaborate affidavit is submitted on the subject (Tr. 290). It nowhere appears that the substance of this affidavit was before the Commission. However that may be, though, the obvious answer is that it should be a simple matter to determine what service pipes are leaky and that appellant neither could nor would be required to serve to any such leaky pipes. If appellant does not protect itself against the situation which it outlines, the fault is its own. Certainly the default of the owner of a leaky service pipe against which the company could protect itself should not be charged against the public generally any more than the default of appellant in its distributing system proper should be charged to the public. The simple expedient of installing meters at the curb,

adopted with respect to the distribution of water, would probably do much to correct loss occurring in service pipes.

The people who pay the rates did not construct this system and did not permit it to become leaky. The system was either defectively constructed or else has been permitted to become leaky. The people are responsible in neither event. The Commission's order was based on the idea that the public and the company should bear the burden of leakage, half and half. It is submitted it was more than generous under all the circumstances to permit the company to shoulder off on consumers, who are not responsible for the condition, the burden of leakage in excess of 10%, and that it is unfair to expect the public to bear all the leakage burden, and that, moreover, no showing has been made on its behalf which would justify appellant's effort to escape this entire burden to the public.

If this position of appellees be correct, it follows that the attempt of appellant to demonstrate that the rates are confiscatory fails, in large measure, by reason of the leakage situation alone. This is true because appellants' cause is largely predicated upon Mr. Straight's affidavits estimating net

income, analyzing which Mr. McKay of the Commission states in his affidavit (Tr. 327):

"The unfavorable result of operation of the complainant company forecasted in the affidavit of Mr. Straight *depends wholly upon the assumption that the gross loss and waste of gas shown to have occurred during the past year is to be permitted to continue without correction and is to be condoned and approved* by this court. Said result is converted into a highly favorable result if the cost of gas as a factor in future operation be based upon a leakage of 10 per cent, or 1,000,000 cu. ft. per year per mile of 3 inch main or its equivalent, instead of 20 per cent or 2,000,000 cu. ft. per year per mile of 3 inch main, which still would permit a loss and waste five times as great as the Kansas Commission, after exhaustive investigation, has held reasonable, and twice as great as the Oklahoma Commission's engineer would approve."

The case is respectfully submitted,

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## APPENDIX.

### LIST OF CASES DEALING WITH RESERVES FOR DEPRECIATION AND AMORTIZATION.

W. S. Reed et al. v. China Tel. Co., P. U. R. —C,  
386 (Maine);

Hoffman v. Elmira Water, etc., Co., New York  
P. U. R. 1920D, 274 (N. Y.);

Re Farmers Ind. Tel. Assn., P. U. R. 1920E  
(Wisc.);

Wisconsin Rrd. Comm. Report for 1910, p. 599;  
Mountain States Tel. & Tel. Co., P. U. R. 1921B,  
p. 752;

Public Service Commission ex rel. v. Pacific  
Power and Light Co., P. U. R. 1920F, 954  
(Wash.);

Re Champaign & Urbana Water Co., P. U. R.  
1919E, 798 (Ill.);

Davies v. Pennsylvania Gas Co., P. U. R. 1921B,  
342;

Mayor of Binghampton v. Binghampton Heat,  
Light & Power Co., P. U. R. 1921B, 581;

Hoffman v. Elmira W. R. & R. Co., P. U. R.  
1921C, 409;

Breen v. New York Utilities, P. U. R. 1921B,  
463;

Re Citizens Telephone Co., P. U. R. 1921E, 308;

Re Helena L. & R. Co., P. U. R. 1920D, 668.